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Plaintiff's Exhibits Received in Evidence

1—Trust Indenture, Identical with Exhibit A of complaint, printed herein at pages 21 to 53, marked in evidence at folio 543.

2—Agreement dated May 23, 1940, marked in evidence at folio 549 202

3—Judgment entered January 30, 1948, marked in evidence at folio 550 211

4—Order on remittitur entered December 12, 1949, marked in evidence at folio 551 229

5—Order for judgment on remittitur of Court of Appeals entered June 16, 1950, marked in evidence at folio 552 231

6—Judgment entered February 17, 1939, as amended by order entered March 7, 1941, marked in evidence at folio 544 233

7—Vesting order No. 4551, marked in evidence at folio 555 247

8—Letter of Office of Alien Property to Trustee, dated April 15, 1953, Identical with Exhibit C of complaint, printed herein at pages 57 to 58, deemed marked in evidence.

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9—Amendment to vesting order No. 4551, Identical with Exhibit B of complaint, printed herein at pages 53 to 56, marked in evidence at folio 555.

10—Transcript of the birth certificate of the defendant Hans Dietrich Schaefer (photoprint), marked in evidence at folio 558 253

11—Account of proceedings, marked in evidence at folio 562 254

12—Supplemental account of proceedings, marked in evidence at folio 565 328

DEFENDANTS' EXHIBIT RECEIVED IN EVIDENCE

A—Department of State Bulletin for May 18, 1953, page 720 (motion to strike from record granted by the Court), marked in evidence at folio 601 337

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Order Settling Case 341

Stipulation Waiving Certification 342

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880551—56

NEW YORK SUPREME COURT

APPELLATE DIVISION—FIRST DEPARTMENT

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York,

Plaintiff-Respondent,

—against—

BRUNO REINICKE, ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA REINICKE SCHAEFER, HANS DIETRICH SCHAEFER, KLAUS REINICKE, FRITZ REINICKE, GERTRUD ERNST, HANS EGON SCHWARZBURGER, HANS ULRICH SCHWARZBURGER, ELISABETH SCHWARZBURGER, CHRISTA SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE SCHWARZBURGER, CHARLOTTE ROTT, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, BERND VOM BAUR, ROLAND ROTT, CHRISTOPH ROTT, ROSELORE KOSTER, formerly ROTT, TILO KOSTER, SITTA KOSTER,

Defendants-Respondents,

and

HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian,

Defendant-Appellant.

Statement Under Rule 234

This action was begun by service of the summons and complaint upon the Attorney General

4 of the United States on October 30, 1953. The defendant-appellant appeared and answered by his attorney, J. Edward Lumbard, United States Attorney for the Southern District of New York on January 26, 1954.

The infant defendant Hans Dietrich Schaefer appeared and answered by his Guardian ad Litem Samuel Anatole Lourie on March 5, 1954.

The defendants-respondents Bruno Carl Reinicke, Robert Hans Reinicke, and Johanne Maria
5 Reinicke Schaefer appeared and answered by their attorney, Samuel Anatole Lourie on March 8, 1954.

The defendants-respondents Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Baur, Christoph Rott, Tilo Koster and Sitta Koster ap-
6 peared and answered by their attorney Arthur J. O'Leary on March 4, 1954.

The above-named are the original parties. There has been no change of parties or of attorneys herein since the action was begun.

Judgment was rendered in favor of the plaintiff on June 15, 1954 after a trial without a Jury before Mr. Justice Schreiber.

Notice of Appeal was served upon the respondents on July 1, 1954 and filed on July 2, 1954.

Notice of Appeal

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Index No. 12138/1953.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York,

Plaintiff,

—against—

HERBERT BROWNELL, JR., BRUNO REINICKE, et al.,

Defendants.

Sirs:

PLEASE TAKE NOTICE that the defendant, Herbert Brownell, Jr., Attorney General of the United States, hereby appeals to the Appellate Division of the Supreme Court in and for the First Department, from a final judgment entered herein in favor of the above named plaintiff and against Herbert Brownell, Jr., one of the above named defendants, denying the relief requested in the answer of Herbert Brownell, Jr., and granting plaintiff judgment to have its account judicially settled in the office of the Clerk of the County of New York, on June 22, 1954, and from each

and every part of said judgment on both questions of law and questions of fact.

Dated: New York, N. Y., June 30, 1954.

Yours, etc.,

J. EDWARD LUMBARD,
United States Attorney for the
Southern District of New York,
Attorney for Herbert Brownell,
Jr., Attorney General of the
U. S.,

Office & P. O. Address,
U. S. Court House,
Foley Square,
New York 7, N. Y.

To:

THOMAS A. RYAN, Esq.,
Attorney for Plaintiff,
37 Wall Street,
New York 5, N. Y.

SAMUEL ANATOLE LOURIE, Esq.,
Guardian ad Litem and Attorney for
Defendants, Bruno Carl Reinicke,
et al.,
15 Broad Street,
New York 5, N. Y.

ARTHUR J. O'LEARY, Esq.,
Guardian ad Litem for
Infant Defendants,
70 Pine Street,
New York 5, N. Y.

Summons

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

Plaintiff designates New York County as the place of trial.

Plaintiff's principal office and place of business is in New York County.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York,

Plaintiff,

—against—

BRUNO REINICKE, ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA REINICKE SCHAEFER, HANS DIETRICH SCHAEFER, KLAUS REINICKE, FRITZ REINICKE, GERTRUD ERNST, HANS EGON SCHWARZBURGER, HANS ULRICH SCHWARZBURGER, ELISABETH SCHWARZBURGER, CHRISTA SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE SCHWARZBURGER, CHARLOTTE ROTT, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, BERND VOM BAUR, ROLAND ROTT, CHRISTOPH ROTT, ROSELORE KOSTER, formerly ROTT, TILO KOSTER, SITTA KOSTER and HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian,

Defendants.

To The Above-Named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action, and to serve a copy of your

answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service; and in case of your failure to appear, or answer, judgment will be taken against you by default, for the relief demanded in the complaint.

Dated: September 30, 1953.

THOMAS A. RYAN
Attorney for Plaintiff
Office and Post-Office Address
37 Wall Street
New York 5, New York

To The Above-Named Defendants in This Action:

The foregoing summons is served upon you by publication pursuant to an order of Hon. Denis O'L. Cohalan, dated the 2nd day of October, 1953, and filed with the complaint in the office of the clerk of the County of New York at the County Court House in said County.

THOMAS A. RYAN
Attorney for the Plaintiff
Office and P. O. Address
37 Wall Street
New York 5, New York

Complaint

19

[SAME TITLE.]

The plaintiff above named, appearing by Thomas A. Ryan, its attorney, respectfully shows to the Court and alleges:

1. Charles L. Cobb, who was then a resident of the State of Illinois, executed and delivered to The Chase National Bank of the City of New York, a certain Indenture of Trust dated the 21st day of March, 1928, a copy of which is hereto annexed, marked Exhibit A and made a part hereof, and transferred and delivered to the said The Chase National Bank of the City of New York certain property, set forth in Schedule A of said Indenture, in trust to hold, manage, care for and protect and to collect the income from the said trust estate during the lives of Bruno Reinicke, Jr., and his wife, Elisabeth Reinicke. By the terms of Article 4 of the said Indenture the Trustee was directed to add the net income of the trust to the principal of the trust estate unless Bruno Reinicke, Jr., should direct the Trustee to pay the income to himself or to any one or all of his children. By the terms of Article 6 of the said Indenture the Trustee was directed on the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke to divide the trust estate and accumulated income into as many equal shares as there should be children of the said Bruno Reinicke,

20

21

Jr., living at that time and children who had died leaving descendants living at that time and the disposition of such shares to such children or descendants of deceased children was further provided for by the terms of said Article 6, and it was further provided that upon the death of the said Bruno Reinicke, Jr., and Elisabeth Reinicke without issue, the principal and accumulated income of the said trust should be paid over and delivered to certain named nephews and nieces of Bruno Reinicke and the issue of any such deceased nephew or niece.

2. The said The Chase National Bank of the City of New York accepted the trust created by the said Indenture of Trust, consented and agreed to act as Trustee under the said indenture, received the said property pursuant to the terms of the said Indenture and thereafter continuously administered the said trust and is now administering the same and is now holding the property constituting the principal and accumulated income of the said trust so created by the said Indenture of Trust at its office at 11 Broad Street, New York City, New York.

3. The Chase National Bank of the City of New York is a national banking association organized and existing under the laws of the United States of America, having its principal office and place of business at No. 18 Pine Street in the Borough of Manhattan, City, County and State of New York.

4. Said Indenture was modified and certain controversies between the said Trustee and Bruno Reinicke, Jr., were settled by an Agreement dated May 23, 1940 between Bruno Reinicke Jr., Charles L. Cobb, Albert A. Beregh, Guardian *ad litem* for Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margaret Elisabeth Reinicke, Roland Rott, Rose Lore Rott, Fritz vom Baur, Hans Adolf Roth and Heide Roth; and The Chase National Bank of the City of New York, as Trustee under said Indenture dated March 21, 1928. Said Agreement dated May 23, 1940, was approved by Order of this Court dated March 7, 1941. 25 26

5. By a judgment of this Court entered on the 17th day of February, 1939, as amended by said Order dated March 7, 1941, the account of the plaintiff of its proceedings for the period from the 21st day of March, 1928, to the 12th day of July, 1938, as such Trustee, was judicially settled and allowed.

27

6. By a judgment of this Court dated the 30th day of January, 1948, the account of the plaintiff as Trustee as aforesaid for the period from July 12, 1938 to October 19, 1944, was judicially settled and allowed.

7. No other accountings have been had of the proceedings of the plaintiff as Trustee as aforesaid.

28 8. Upon information and belief, Ella Schwarzburger and Hans Eberhard Schwarzburger, named in the vesting order of the Alien Property Custodian hereinafter referred to in paragraph 10 of this complaint, have died.

9. In a previous action brought by the plaintiff against substantially the same defendants except the Attorney General of the United States, it was determined by the judgment of this Court, entered on the 17th day of February,
29 1939, and thereafter amended, that said Charles L. Cobb had no interest in the trust and was not the real creator of the trust created by the said indenture but that the defendant, Bruno Reinicke, then Bruno Reinicke, Jr., was the true creator of the said trust.

10. On January 29, 1945, James E. Markham, Alien Property Custodian of the United States, pursuant to the authority conferred upon him by the Trading with the Enemy Act, as amended
30 (50 U. S. C. App. Secs. 1, *et seq.*) and by Executive Order No. 9095, as amended, issued Vesting Order No. 4551, vesting in himself to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States, the property described as follows:

> "All right, title, interest and claim of any kind or character whatsoever of Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno Carl Reinicke, Robert Hans Reinicke, Jo-

hanne Maria Margarete Elisabeth Reinicke, child or children, names unknown, of Bruno Reinicke, Jr., and Elisabeth Reinicke; Klaus Reinicke, Hans Egon Schwarzburger, Ilse Schwarzburger Roth, Hans Adolf Roth, Heide Roth, Hans Eberhardt Schwarzburger, Karla Maria Rott vom Baur, Fritz vom Baur, Gerd vom Baur, Roland Rott, Rose Lore Rott, Fritz Reinicke, Gertrud Ernst, Ella Schwarzburger, Charlotte Rott, descendants of any deceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; issue, names unknown, of Fritz Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of Ella Schwarzburger; issue, names unknown, of Charlotte Rott; heirs at law, names unknown of Bruno Reinicke, Jr.; and each of them, in and to the trust established under a certain indenture of trust dated March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York."

11. Said Vesting Order was published in the Federal Register of February 8, 1945 (10 Fed. Reg. 1652), and certified copies thereof were, on the 31st day of January, 1945, served by mail upon the plaintiff, its counsel, and the Clerk of this Court.

12. By Executive Order No. 9788, effective October 15, 1946 (11 Fed. Reg. 11981), the Of-

34 fice of Alien Property Custodian was terminated and all authority, rights and functions vested in such office and in the Alien Property Custodian were transferred and vested in the Attorney General of the United States.

13. In another action brought in this Court by the plaintiff against substantially the same defendants, except the Attorney General of the United States (County Clerk's number 6987-1944) the Attorney General of the United States
35 as successor to the Alien Property Custodian, requested leave to intervene, and leave to intervene was granted to him by this Court; and the Attorney General filed an answer to the complaint and requested the Court to determine that the Trustee be directed, upon the termination of the trust, to deliver to the Attorney General of the United States the shares of the trust comprised of the persons whose interests were acquired by the Attorney General by Vesting Order No. 4551 and that he had succeeded
36 to certain powers over the said trust. The determination so requested was not granted by this Court.

14. A judgment dated January 30, 1948, was entered in the said action, which judgment was affirmed by the Appellate Division of the Supreme Court and by the Court of Appeals, in which it was adjudged that the account of the plaintiff as such Trustee be judicially settled, and in which it was further adjudged as follows

in paragraphs 8 to 16 inclusive of the said judgment: 37

"8. The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York is authorized in its discretion to exercise the administrative powers conferred upon it by the said Trust Indenture which are subject to the control of the said Bruno Reinicke during the period after this judgment becomes final and until the termination of hostilities with the German Reich and for such other further period as the control of the said Bruno Reinicke Jr. over the said administrative powers is subject to blocking or other Governmental control either of this country or of any government in Germany. 38

"9. Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive the income of the said trust which had been accumulated as of the date of the making of the Vesting Order by the Alien Property Custodian #4551 to wit on January 29, 1945. 39

"10. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian is not entitled to receive any part of the accumulated income of

said trust held by the said Trustee which has been collected of the said Trustee since the date of the said Vesting Order #4551.

"11. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive any income which may be collected hereafter during the lifetime of Bruno Reinicke, Jr., the settlor in the said trust.

"12. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian has not succeeded to the powers with respect to the management and disposition of the trust lodged in the said settlor, Bruno Reinicke, Jr. and his wife, Elisabeth Reinicke.

"13. It was the intention of the Settlor that all of the income from said trust and the accumulated income thereof which should not be used for the children of said Bruno Reinicke, Jr. should be accumulated for the benefit of those ultimately entitled to take the corpus of the trust upon its termination.

"14. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States has no power to change the terms of the said trust indenture dated the 21st day of

March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, and to confer upon himself property rights superior to those of his predecessors in interest. 43

"15. The power retained by the said Bruno Reinicke, Jr. to direct the payment of income is a personal power and the Alien Property Custodian did not succeed to such power by reason of said Vesting Order #4551.

"16. The powers over the management of the trust fund retained by Bruno Reinicke, Jr. are also personal powers and the Alien Property Custodian did not succeed to said powers by the said Vesting Order." 44

15. A deficiency on account of gift tax for the year 1941 was claimed by the Commissioner of Internal Revenue against the plaintiff as Trustee as aforesaid in the sum of $23,500.22, with interest from April 1, 1949. This claim was rejected by the Tax Court of the United States. If further litigation should be had and the Commissioner should be successful, it would be necessary to pay the amount of the deficiency with interest from April 1, 1949 out of the trust fund. Consequently, it is necessary that, if this Court should determine that the funds in the hands of the plaintiff should be paid over to the Attorney General of the United States as successor to the Alien Property Custodian, a suit- 45

able reserve of not less than $40,000 should be retained by the plaintiff to enable it to pay such tax liability and interest thereon and for counsel fees in connection with such litigation.

16. By a further order dated April 6, 1953, the Attorney General of the United States as successor to the Alien Property Custodian purported to vest the entire trust fund by purporting to amend the said vesting order numbered 4551, referred to in paragraph 10 of this complaint. A copy of said order is annexed hereto, made a part hereof and marked Exhibit B.

17. The Attorney General of the United States as successor to the Alien Property Custodian, has heretofore submitted to the jurisdiction of this Court in the matter of said trust in the action referred to in paragraph 13 of this complaint, and a judgment has been made determining that the powers claimed by the Attorney General of the United States as successor to the Alien Property Custodian, over this trust are not vested in it and may not be exercised by the Attorney General.

18. At the time of the making of said order dated April 6, 1953, by the Attorney General, there was in being an American citizen, the defendant Hans Dietrich Schaefer, a grandson of Bruno Reinicke, who was born on the 15th day of August, 1953, at Detroit in the State of Michigan, who has a vested interest in the said trust fund.

19. At the time of the making of the said order dated the 6th day of April, 1953, the defendant, Sitta Koster, was living; the said defendant was born on the 21st day of May, 1946. The said infant has a contingent remainder interest in the said trust.

20. Upon information and belief by reason of the fact that the Attorney General of the United States as successor to the Alien Property Custodian has illegally vested the trust fund, to the detriment of the said two infants, and other persons who are now or in the future may be, interested in the said trust, it is the duty of the plaintiff as Trustee, for the protection of such persons, to bring suit in the Federal Court pursuant to the provisions of Section 9-a of the Trading with the Enemy Act against the Attorney General for the purpose of having the trust fund revested for the benefit of such persons, if this Court should direct the plaintiff to transfer the principal of the said trust fund to the Attorney General.

21. A reserve should be retained by the plaintiff to enable it to prosecute such suit if this Court should determine that the trust be paid over to the Attorney General of the United States. The plaintiff has been advised and verily believes that not less than $25,000 should be set aside as a reserve for the purpose of such litigation.

52 22. Upon information and belief defendants to this cause of action are the only persons who have any interest in the said trust and all of the defendants who are natural persons are of sound mind and all of them are of full age except Hans Dietrich Schaefer who is an infant under the age of fourteen years, Hans Ulrich Schwarzburger, Elisabeth Schwarzburger and Christa Schwarzburger who are infants under the age of fourteen years, and nieces of Bruno Reinicke; Hans Adolf Roth, Heide Roth, and Christel Roth
53 who are infants over fourteen years of age, and Eike Roth, Uwe Roth and Eckard Roth who are infants under fourteen years of age, Hans Eberhard Schwarzburger and Sabine Schwarzburger who are infants under fourteen years of age; Bernd vom Baur who is an infant under fourteen years of age; Christoph Rott who is an infant under fourteen years of age; Tilo Koster and Sitta Koster who are infants under fourteen years of age.

54 23. The Attorney General of the United States has requested the plaintiff as Trustee as aforesaid to account and to send copies of all papers in this action to the office of the Attorney General as appears from the letter from the office of the Attorney General dated April 15, 1953, directed to the plaintiff, a copy of which is annexed hereto, made a part hereof, and marked Exhibit C.

WHEREFORE, plaintiff demands judgment: 55

1. That the account of proceedings of the plaintiff as Trustee of the trust under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York be taken and stated and as so taken and stated that the same be judicially settled and allowed;

2. That the account of the plaintiff be approved and that the plaintiff be discharged from 56
all liability, accountability and responsibility as Trustee of said trust created by said Indenture dated the 21st day of March, 1928, as to all matters and things embraced in said account except as to any property directed to be retained by it in the judgment to be made herein;

3. That this Court determine whether or not the principal of this trust after expenses and reserves should be transferred to the Attorney General of the United States as successor to the 57
Alien Property Custodian;

4. That if this Court should determine that the trust fund after the payment of expenses and other charges and reserves should be transferred by the plaintiff to the Attorney General of the United States as successor to the Alien Property Custodian, the plaintiff be directed to retain out of the principal of said fund, cash and/or securities in the sum of $40,000 as a reserve for gift tax claims of the Government

of the United States against the said trust and possible future litigation in connection therewith, and income tax, and another reserve in the sum of not less than $25,000 to cover future litigation against the Attorney General of the United States pursuant to the provisions of Section 9-a of Trading with the Enemy Act for the recovery of the trust fund;

5. That the plaintiff's costs and disbursements and any counsel fees be allowed and paid out of the principal and accumulated income of said trust and that the plaintiff have such other and further relief in the premises as to this Court may seem just and proper.

THOMAS A. RYAN
Office and Post-Office Address
37 Wall Street,
New York 5, New York
Attorney for Plaintiff

(Verified by Philip Y. Eastman, Personal Trust Officer, on September 23, 1953.)

EXHIBIT A, ANNEXED TO COMPLAINT

61

TRUST INDENTURE

This indenture made in duplicate this 21st day of March A. D. 1928, at Chicago, Illinois, by and between Charles L. Cobb, a resident of Hinsdale, Dupage County, Illinois, hereinafter referred to as "grantor" and The Chase National Bank of the City of New York, State of New York, a corporation organized and existing under the banking laws of the United States and duly authorized and qualified to accept and 62
administer trusts in the State of Illinois, hereinafter referred to as the "trustee", witnesseth:

In consideration of the covenants herein contained, and of other good and valuable considerations, and of the sum of One ($1.00) Dollar to the grantor in hand paid by the trustee, the receipt whereof is hereby acknowledged, the grantor has granted, conveyed, assigned, transferred, quitclaimed and delivered, and by these presents does grant, convey, assign, transfer, 63
quitclaim and deliver unto the trustee the property described in Schedule A, which Schedule A is made a part hereof, together with all the appurtenances, and all the estates and rights of the grantor thereto, to have and to hold, all and singular, the aforesaid property as trustee for the benefit of the children of Bruno Reinicke, Jr., and Elisabeth Reinicke, his wife, that is to say, Bruno Carl Reinicke and Robert Hans Reinicke and any other children that may hereafter be born unto the said Bruno Reinicke, Jr., of his present marriage or any subsequent mar-

64 riage, for the uses and purposes and upon the terms and conditions herein set forth:

1. During the lives of Bruno Reinicke, Jr., and Elisabeth Reinicke, his wife, and the life of the survivor of them, and for such further time or times as is hereinafter provided, the trustee shall hold, manage, care for and protect said trust estate and collect the income therefrom, but subject, however, to all of the terms and conditions herein provided.

65

2. From the principal of this trust estate, the trustee shall make such loans to such beneficiaries hereof, in such amounts, for such security, if any, and upon such terms and conditions, as Bruno Reinicke, Jr., may direct.

3. The trustees shall make such loans of money to Bruno Reinicke, Jr., from the principal of said estate, in such amounts, at such times, and for such security, if any, and on such terms
66 and conditions as Bruno Reinicke, Jr., may direct, provided that the total of any loan or loans to Bruno Reinicke, Jr., outstanding at any one time, shall not exceed eighty per cent. (80%) of the principal of the trust estate at such time.

4. After the payment of all expenses, charges, fees, taxes and other governmental charges, the trustee shall, at the end of each quarter year, add the net income to the principal of the trust estate unless Bruno Reinicke, Jr., shall, during that quarter, direct the trustee to pay said net

income, or some part thereof, to any one or all 67
of his children or to Bruno Reinicke, Jr., or any person or persons that he may direct, for the benefit of said child or children, and the trustee shall in that event make such payments in accordance with such directions; provided, however, that if Bruno Reinicke, Jr., shall notify the trustee in writing that he has returned to the United States of America and intends to become a resident thereof, he may thereafter direct the trustee to pay to him personally not to exceed one-half of said net income, and upon 68
receiving said instructions the trustee shall make said payment or payments to Bruno Reinicke, Jr., in accordance with said instructions.

If Bruno Reinicke, Jr., shall desire to use any part or all of said net income for the support, maintenance, education and travel of any or all of his children, then he may direct the trustee to pay to him or to any one else the said net income, or any part thereof, to be used as he deems best for any of his children and he shall direct the trustee how much of said 69
net income shall be paid to him or to any one else for such purposes and the trustee shall charge said payments to the beneficiary or beneficiaries hereof in accordance with instructions given by said Bruno Reinicke, Jr. The receipts given said trustee by said Bruno Reinicke, Jr., or by parties designated by him, for all payments out of income of said trust estate shall fully discharge and release said trustee on account thereof.

70 5. The trustee may in its sole discretion purchase life insurance upon the life or lives of any beneficiary or beneficiaries named herein, but not upon the life of the grantor hereof, and thereafter pay any and all premiums thereon, provided, however, that the trustees shall be named beneficiary of the said insurance, any and all money collected by the trustee, from any and all such insurance, shall be added to the principal of this trust estate.

71 6. Upon the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, the trustee shall divide the trust estate and accumulated income, if any, then held by it, into as many equal shares as there shall be children of said Bruno Reinicke, Jr., then living, and as there shall then be deceased children of Bruno Reinicke, Jr., who shall have theretofore died leaving a descendant or descendants living at the time of the death of the survivor of said Bruno Reinicke, Jr., and Elisabeth Reinicke, and
72 the trustee shall hold and/or dispose of each of said equal shares of the trust estate upon the terms and conditions hereinafter stated:

(a)

If, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Bruno Carl Reinicke is living and shall then have attained the age of thirty-six years, the trustee

shall immediately distribute, convey, transfer and deliver unto him one of the said equal shares of the trust estate. 73

If, however, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Bruno Carl Reinicke is living and shall not then have attained the age of thirty-six years but shall have attained the age of thirty-one years, then the trustee shall immediately distribute, convey, transfer and deliver to him three-quarters of one of the said equal shares of the trust estate and the trustee shall hold the balance of said equal share of the trust estate in trust and collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-six years, at which time the trustee shall immediately distribute, convey, transfer and deliver unto him the remaining part or portion of his share of the trust estate, together with any accumulated income thereon. 74 75

If, however, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Bruno Carl Reinicke is living and shall not have attained the age of thirty-one years, but shall have attained the age of twenty-six years, then the trustee shall immediately distribute, convey, transfer and deliver to him one-half of one of the said equal shares of the trust estate and the trustee shall take and hold the balance of said equal share of the trust estate

76 in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-one years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-half of the balance of his share of the trust estate then held in trust and the trustee shall take and hold the remainder of his said share of the trust estate in trust and shall collect and
77 receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-six years, at which time the trustee shall immediately distribute, convey, transfer and deliver unto him the remaining part or portion of his share of the trust estate, together with any accumulated income thereon.

If, however, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth
78 Reinicke, Bruno Carl Reinicke is living and shall not have attained the age of twenty-six years, but shall have attained the age of twenty-one years, then the trustee shall immediately distribute, convey, transfer and deliver to him one-fourth of one of the said equal shares of the trust estate, and the trustee shall take and hold the balance of his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust, shall

pay to him the net income, quarterly, until he 79
shall have attained the age of twenty-six years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-third of the balance of his share of the trust estate then held in trust and the trustee shall take and hold the remainder of his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust, shall pay to him the net income, quarterly, until he shall have attained the 80
age of thirty-one years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-half of the balance of his share of the trust estate then held in trust, and the trustee shall hold the remainder of his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-six years, at which time 81
the trustee shall distribute, convey, transfer and deliver unto him the remaining part or portion of his share of the trust estate, together with any accumulated income thereon.

If, however, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Bruno Carl Reinicke is living and shall not have attained the age of twenty-one years, then the trustee shall take and hold one of the said equal shares of the trust estate in trust

and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of twenty-one years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-fourth of his share of the trust estate then held in trust, and the trustee shall take and hold the balance of his share of the trust estate in trust and collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of twenty-six years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-third of the balance of his share of the trust estate then held in trust and the trustee shall take and hold the remainder of his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-one years, at which time the trustee shall immediately distribute, convey, transfer and deliver unto him one-half of the balance of his share of the trust estate then held in trust and the trustee shall hold the remainder of his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom,

and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-six years, at which time the trustee shall immediately distribute, convey, transfer and deliver unto him the remaining part or portion of his share of the trust estate, together with any accumulated income thereon. 85

(b)

If, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Robert Hans Reinicke is living and shall then have attained the age of thirty-six years, the trustee shall immediately distribute, convey, transfer and deliver unto him one of the said equal shares of the trust estate. 86

If, however, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Robert Hans Reinicke is living and shall not then have attained the age of thirty-six years but shall have attained the age of thirty-one years, then the trustee shall immediately distribute, convey, transfer and deliver to him three-quarters of one of the said equal shares of the trust estate and the trustee shall hold the balance of said equal share of the trust estate in trust and collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty- 87

six years, at which time the trustee shall immediately distribute, convey, transfer and deliver unto him the remaining part or portion of his share of the trust estate, together with any accumulated income thereon.

If, however, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Robert Hans Reinicke is living and shall not have attained the age of thirty-one years, but shall have attained the age of twenty-six years, then the trustee shall immediately distribute, convey, transfer and deliver to him one-half of one of the said equal shares of the trust estate and the trustee shall take and hold the balance of said equal share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-one years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-half of the balance of his share of the trust estate then held in trust and the trustee shall take and hold the remainder of his said share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-six years, at which time the trustee shall immediately distribute, convey, transfer and de-

liver unto him the remaining part or portion of 91
his share of the trust estate, together with any
accumulated income thereon.

If, however, at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Robert Hans Reinicke is living and shall not have attained the age of twenty-six years, but shall have attained the age of twenty-one years, then the trustee shall immediately distribute, convey, transfer and deliver to him one-fourth of one of the said equal shares of the trust estate, and the trustee shall take and 92
hold the balance of his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust, shall pay to him the net income, quarterly, until he shall have attained the age of twenty-six years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-third of the balance of his share of the trust estate then held in trust and the trustee shall take and hold the remainder of 93
his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust, shall pay to him the net income, quarterly, until he shall have attained the age of thirty-one years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-half of the balance of his share of the trust estate then held in trust, and the trustee shall hold the remainder of his share of the trust

94 estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-six years, at which time the trustee shall distribute, convey, transfer and deliver unto him the remaining part or portion of his share of the trust estate, together with any accumulated income thereon.

If, however, at the time of the death of the
95 survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, Robert Hans Reinicke is living and shall not have attained the age of twenty-one years, then the trustee shall take and hold one of the said equal shares of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of twenty-one years, at which time the trustee shall im-
96 mediately distribute, convey, transfer and deliver to him one-fourth of his share of the trust estate then held in trust, and the trustee shall take and hold the balance of his share of the trust estate in trust and collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of twenty-six years, at which time the trustee shall immediately distribute, convey, transfer and deliver to him one-third of the balance of

his share of the trust estate then held in trust 97
and the trustee shall take and hold the remainder of his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-one years, at which time the trustee shall immediately distribute, convey, transfer and deliver unto him one-half of the balance of his share of the trust estate then held in trust and the 98
trustee shall hold the remainder of his share of the trust estate in trust and shall collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him the net income, quarterly, until he shall have attained the age of thirty-six years, at which time the trustee shall immediately distribute, convey, transfer and deliver unto him the remaining part or portion of his share of the trust estate, together with any accumulated income thereon. 99

(c)

In case any child be born unto Bruno Reinicke, Jr., after the date of the execution of this indenture and such child shall have attained the age of twenty-one years at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, and shall be living at the time of the death of such survivor, then

100 the trustee shall immediately distribute, convey, transfer and deliver to such child one of the said equal shares of the trust estate.

In case any child be born unto Bruno Reinicke, Jr., after the date of the execution of this indenture and such child shall not have attained the age of twenty-one years at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, and shall be living at the time of the death of such survivor, then the trustee shall take and hold in trust one of
101 the said equal shares of the trust estate and collect and receive all rents, issues and profits and other income therefrom, and after paying the necessary expenses of the trust shall pay to him or her the net income, quarterly, until such child shall attain the age of twenty-one years, at which time the trustee shall distribute, convey, transfer and deliver to such child its said share of the trust estate and any accumulated income thereon.

102 (d)

If at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, any child of Bruno Reinicke, Jr., shall be dead, leaving a descendant or descendants surviving at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, then the trustee shall immediately distribute, convey, transfer and deliver one of the said equal shares of the trust estate unto the descendant or de-

scendants of each such deceased child of Bruno 103
Reinicke, Jr., such descendant or descendants to take per stirpes and not per capita.

(e)

In the event any child of Bruno Reinicke, Jr., is living at the time of the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke, and thereafter shall die while the trustee holds in trust for his or her benefit any part of the trust estate, then, upon the death of each 104
such child, in case such child leaves any descendant him or her surviving, the trustee shall immediately distribute, convey, transfer and deliver to such descendant or descendants, per stirpes and not per capita, such part of the trust estate as the trustee then holds for the benefit of such deceased child; and in case such a deceased child of Bruno Reinicke, Jr., leaves no descendant him or her surviving, then the trustee shall immediately distribute, convey, transfer and de-
liver such part of the trust estate as the trustee 105
then holds for the benefit of each such deceased child, to the child or children of Bruno Reinicke, Jr., living at the time of the death of such deceased child, in equal shares, share and share alike, and to the descendant or descendants then living of any deceased child of Bruno Reinicke, Jr., such descendant or descendants of each deceased child to take a child's share per stirpes and not per capita.

If, at the time of the death of the survivor of

106 Bruno Reinicke, Jr., and Elisabeth Reinicke, there be no descendant of Bruno Reinicke, Jr., then living, or in case it thereafter happen there be no descendant of Bruno Reinicke, Jr., living while the trustee still holds undistributed any property in trust for the benefit of any deceased child of Bruno Reinicke, Jr., then such trust estate so held by the trustee shall, immediately, upon the happening of either contingency, be disturbed, conveyed, transferred and delivered in equal shares to the nephews
107 and nieces of Bruno Reinicke, Jr., then living, being the children of Fritz Reinicke, brother of Bruno Reinicke, Jr., and the children of Gertrude Ernst, of Ella Schwarzburger, and of Charlotte Rott, sisters of Bruno Reinicke, Jr., the issue of any deceased nephew or niece taking its parent's share per stirpes and not per capita; and if, upon the happening of either contingency, there be no descendant of Bruno Reinicke, Jr., then living, and there then be living no such nephew or niece or descendant of a de-
108 ceased nephew or niece, then such trust property shall immediately be distributed, conveyed, transferred and delivered to the heirs at law of Bruno Reinicke, Jr., as the same may be determined by the laws of descent and distribution of the State of Illinois in force at such time.

(f)

After the death of both Bruno Reinicke, Jr., and Elisabeth Reinicke, the trustee may, while

this trust continues, from time to time make payments to any beneficiary from the principal of the trust estate held for such beneficiary when in the opinion of the trustee it is necessary or proper to do so, in order to meet any unusual emergency or to maintain, educate and support such beneficiary in the manner which he or she has been accustomed to live. 109

7. The trustee shall have power to manage, sell, lease, hypothecate, pledge, invest, re-invest, mortgage, transfer or exchange or hold in the form of investment in which received; all or any of said property and all property that may hereafter from time to time be substituted therefor or added thereto, at such prices and upon such terms and conditions and in such manner as the trustee deems best, including the right to lease for any term of years, days or months, irrespective of the period of this trust; to execute and deliver any proxies, powers of attorney or agreements; to invest and re-invest money, income and earnings coming into the possession of the trustee under the terms of this trust in such loans, stocks, securities, property or real estate as the trustee may deem proper and suitable, irrespective of any statutes, rules or practices of chancery or other courts, or laws, now or hereafter in force, limiting the investments of trust companies or trustees, generally or specifically; and to vary and transpose investments so made into others of like or unlike nature. The trustee shall have power to com- 110 111

promise, compound and adjust claims in favor of or against the trust estate, upon such terms and conditions as the trustee deems for the best interest of this trust and the beneficiaries hereof.

The said trustee is hereby given full power and authority to take such action as may be deemed advisable or proper with respect to any proposed re-organization, consolidation, liquidation, financing, re-financing, sale, or other change in structure of any corporation or any property of any corporation whose securities form a part of this trust estate, and said trustee is given full power and authority to exercise any rights and privileges granted to stockholders of corporations whose stock form a part of this trust estate, or to sell or otherwise dispose of such rights and privileges, and to make any necessary payments therefor out of the trust estate. Upon the request of Bruno Reinicke, Jr., said trustee shall execute a proxy or proxies giving said Bruno Renicke, Jr., or any person whom he may designate, full power and authority to vote any and all capital stock belonging to the said trust estate, at any and all meetings of stockholders, whether regular or special. The trustee may cause securities held by it as a part of the trust estate to be registered in its name as trustee, or in the name of a nominee or nominees, or may hold the same unregistered or payable to bearer. Provided, however, that the trustee shall not exercise any of the foregoing powers mentioned in this paragraph without first securing the approval of Bruno Reinicke,

Jr., while he lives; and after his death, the approval of Elisabeth Reinicke while she lives; and thereafter, the approval of a majority of the beneficiaries of this trust who shall have attained the age of twenty-one years. If, however, the trustee has notified any beneficiary whose approval is required as aforesaid of any contemplated act of the trustee, and such beneficiary does not reply to said notice within thirty (30) days from the date said notice was mailed to him, then, unless the trustee has been otherwise directed by the beneficiary whose approval is required as aforesaid, the trustee may exercise any of the aforesaid powers as the trustee in its sole discretion shall deem for the best interests of the trust estate and the beneficiaries thereof. 115 116

Provided further that during the life of Bruno Reinicke, Jr., the trustee shall consult with him at his pleasure and be guided by his wishes in all matters of trust policy when he makes the same known to the trustee, and after his death shall consult with Elisabeth Reinicke, his wife, and be guided by her wishes in all matters of trust policy when she makes the same known to the trustee. In no case shall any party dealing with the trustee in relation to the trust property, or to whom said property or any part thereof shall be conveyed, contracted to be sold, leased, mortgaged or pledged by said trustee, be obliged to see to the application of any purchase money, rent, or money borrowed or advanced on said property, or be 117

obliged to see that the terms of this trust have been complied with, or be obliged to see that the approval hereinbefore provided for has been given, or be obliged to inquire into the necessity or expediency of any act of the trustee, or be obliged or privileged to inquire into any of the terms of this trust agreement; and every deed, trust deed, mortgage, lease, promissory note or other instrument executed by said trustee in relation to said trust property shall be conclusive evidence in favor of every person relying upon or claiming under any such conveyance, lease, promissory note or other instrument, (a) that at the time of the delivery thereof the trust created by this instrument was in full force and effect, (b) that such conveyance, lease, promissory note, or other instrument was executed in accordance with the trusts, conditions and limitations contained in this trust agreement and is binding upon Charles L. Cobb, Bruno Reinicke, Jr., Elisabeth Reinicke and all beneficiaries hereunder, and (c) that said trustee was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage, promissory note or other instrument. The trustee shall not be liable for any loss that may result from any act performed by it with the approval of that person or those persons whose approval is required, as aforesaid.

If in investing the proceeds of the trust estate, the trustee shall purchase bonds or other obligations at a premium, it shall not be required

to amortize such premium out of the net income subsequently derived from such investment. 121

The trustee shall have power to execute and deliver any and all deeds, conveyances, leases, mortgages, promissory notes or other instruments in writing necessary or proper in carrying out the terms of this trust agreement, and the trustee agrees to execute any and all instruments necessary to permit Bruno Reinicke, Jr., to exercise any and all rights reserved or granted to him herein.

122

8. The trustee may pay any and all just and lawful taxes and other governmental charges, if any, levied by the United States of America and/or any state thereof against the trust estate and/or any beneficiary thereof, and charge such taxes against the income and/or principal of said trust estate or the beneficiary so taxed. The trustee shall pay all reasonable expenses and charges necessarily incurred by it in the efficient administration of this trust out of the income received from this trust estate if such income be sufficient therefor, otherwise from the principal. 123

In the event any litigation, extraordinary situation or contingency arises which the trustee deems demands it, the trustee may employ such suitable clerks, appraisers, stenographers, accountants, bookkeepers, agents, attorneys or others and pay their reasonable compensation and expenses, as the trustee deems necessary and advisable in administering and protecting the trust estate.

124 The trustee shall not be liable for any neglect, omission or wrong-doing of such agents, attorneys or others, provided reasonable care shall have been exercised in their selection; nor shall the trustee be liable save for its own wilful neglect, default, bad faith or fraud, for any damage or loss to the trust estate.

In the event of the decease of Bruno Reinicke, Jr., and/or Elisabeth Reinicke, the trustee may purchase from the estate of such deceased party, any asset of such estate, so as to provide such
125 estate with moneys for taxation, administration and other expenses, and at prices to the satisfaction of the trustee.

9. Said trustee is authorized and empowered to make and use any of the trust estate in its then actual condition or state of investment without converting the same into money in the payment or distribution or setting apart of any of the distributive shares to the beneficiaries hereinbefore provided for, and the trustee may
126 set apart and distribute said distributive shares either in money, personal property or real estate, at what it may deem to be the fair market value of said property at the time, instead of converting the same into money. Said trustee may make distribution of said trust estate upon such equitable terms and conditions that it will not be necessary to make distribution of fractional shares of corporate stock or bonds or other securities.

Exhibit A, Annexed to Complaint

10. The trustee shall keep complete and correct accounts of all the business of this trust estate, and shall render annually to Bruno Reinicke, Jr., during his lifetime, and after his death to Elisabeth Reinicke, his wife, and at such other times as he or she may request, a detailed and accurate statement of the receipts, disbursements, assets and liabilities of this trust estate. After the death of both Bruno Reinicke, Jr., and Elisabeth Reinicke, the trustee shall render annually to the beneficiaries of this trust estate who shall have attained twenty-one years of age, a like detailed and accurate statement. 127 128

The trustee shall allow and pay to this trust estate interest on all uninvested funds at the rate and in accordance with its rules and practices in force from time to time.

11. The trustee shall have power to determine, after the death of both Bruno Reinicke, Jr., and Elisabeth Reinicke, whether money or property coming into its possession under the terms of this trust shall be treated as principal or income and to charge and apportion expenses and losses, if any, to principal or income, according as the trustee deems just, suitable and for the best interests of this estate and the beneficiaries thereof. 129

12. The trustee agrees that Charles L. Cobb, Bruno Reinicke, Jr., Elisabeth Reinicke and/or any beneficiary of this trust may convey and assign to the said trustee other and additional

130 moneys, stocks, bonds or other property, and when the same is so assigned and delivered, the same will be taken and held by the trustee subject to all the provisions, conditions and limitations herein contained, the same as if such moneys or properties were specifically described and conveyed and delivered to the trustee at the time of the delivery of this trust indenture.

13. The payments of principal and income to beneficiaries hereunder shall not be alienated,
131 disposed of, or in any manner incumbered by them, or any of them while so in possession and control of the Trustee; and if any of said beneficiaries shall at any time or times alienate, charge or dispose of their said respective incomes, or any part thereof, or any interest therein, except as in this Indenture provided, before the same shall have been delivered to them, under the provisions of this instrument; or if by reason of their bankruptcy or other event happening at any time, said income other-
132 wise intended for said beneficiaries or any of them, shall wholly or in part cease to be enjoyed by them, or any of them, as in this Indenture provided and the same, or any part thereof, or interest therein, shall or/but for this proviso would become vested in some other person or persons, then the trusts hereinbefore expressed concerning said income or principal shall thereupon cease and determine as to the beneficiary whose interest may be so affected,

and all income and principal otherwise hereinbefore provided for such beneficiary shall thereafter be held and distributed by the Trustee during the remainder of the life of such beneficiary of this Trust, according to the absolute discretion of the Trustee, but the Trustee may pay to such beneficiary or for his or her maintenance and support, or to the wife, husband, child or children of such beneficiary, during the life of this Trust, thereafter from such income or principal, such sums and such sums only as the Trustee in its absolute discretion shall think fit and proper, using or retaining any unexpended sums for the benefit of any one or more of the beneficiaries hereunder whose interest is not so affected.. 133 134

14. If, under any of the foregoing provisions, either income or principal of said trust shall be payable or distributable to minors, then the trustee shall make such payments to the legal guardian of such minor or minors.

15. Bruno Reinicke, Jr. during his lifetime and after his death, Elisabeth, Reinicke, his wife, shall have the power and right to direct the postponement or advancements of the time of distribution of the shares in whole or in part of any beneficiaries hereunder, provided, however, that in case of any such postponement of distribution the time thereof shall be within the limitations allowed by law. Any such directions 135

shall be given in writing signed by the said Bruno Reinicke, Jr. or Elisabeth Reinicke to the said trustee. Bruno Reinicke, Jr. or Elisabeth Reinicke may if he or she so desires terminate any rights, privileges or powers whatsoever conferred upon him or her under the terms of this Indenture.

16. If purchases or loans as hereinafter provided for can be made upon the credit of the trust estate, the trustee shall, when so directed by Bruno Reinicke, Jr., purchase additional securities or other property for the trust estate and shall hypothecate, mortgage or pledge the securities or property so purchased or such other securities then belonging to the trust estate as Bruno Reinicke, Jr., may direct, as security to any loan made to the trustee for the purpose of purchasing such additional securities or property; the trustee shall, also, if and when so directed by Bruno Reinicke, Jr., cause to be made to the trust estate such loans for such trust purposes as the said Bruno Reinicke, Jr., may direct, upon such terms as may be approved of by him, and may use such securities or other property belonging to the trust estate as the said Bruno Reinicke, Jr., may designate, as security for any such loan or loans, and shall cause to be renewed or extended for such period of time and upon such terms as the said Bruno Reinicke Jr., may approve, any loans that heretofore may have been made secured by property

or securities comprising a part of the trust estate, or any such loans as may hereafter be made. Any such renewals or extensions may be made with the one making the original loan or with anyone else whom Bruno Reinicke, Jr., may designate. In case any such purchase or loan is made the trustee shall be in no way chargeable or accountable for any loss that may be suffered by the trust estate resulting from any such purchase or loan. 139

17. For the purposes of this trust, it is hereby declared that the said Bruno Carl Reinicke was born February 10, 1921, and the said Robert Hans Reinicke was born October 8, 1923, and are now residents of Cook County, State of Illinois. 140

18. The grantor covenants and agrees to execute and deliver such other and further instruments of conveyance or assignment as the trustee may require or deem necessary.

19. If Elisabeth Reinicke survives Bruno Reinicke, Jr., said Elisabeth Reinicke, during the balance of her life, shall have the right and power to have and to exercise all the powers, rights and privileges that Bruno Reinicke, Jr., was entitled to have and to exercise during his lifetime under the terms of this Indenture, the same as if she had expressly herein been granted such powers, rights and privileges, and the trustee shall be bound to follow her directions during such time to the same extent as it was bound to follow the directions of Bruno Reinicke, 141

142 Jr., during his lifetime, provided, however, this trust agreement should not be held or construed to be for the benefit of any children that may be born to the said Elisabeth Reinicke by any marriage subsequent to her marriage to the said Bruno Reinicke, Jr.

20. The trustee shall receive in full for its services as trustee three per cent (3%) per annum of the gross income of this trust estate, and it shall also receive one per cent. (1%) of the
143 principal when the principal is distributed to any beneficiary in accordance with the terms and provisions of this indenture or in case this trust is otherwise terminated as herein provided.

21. Except as is herein set forth, this trust indenture shall be construed and the trust hereby created shall be performed and carried out in accordance with the laws of the State of Illinois and the laws of the United States of America.

144 22. The exercise of any right, privilege or power conferred upon any party named in this agreement, or any beneficiary hereunder, shall not be held to exhaust such right, privilege or power, but every right, privilege or power herein given, granted or conferred shall be held to be cumulative and may be exercised from time to time.

23. Whereas this indenture is intended as a comprehensive plan for the management, control and disposition of the property comprising the

trust estate as a whole, it is hereby declared that 145
in the event of a final adjudication of any court of competent jurisdiction in the United States of America that any provision herein made is invalid then this entire indenture of trust, together with all terms, conditions, provisions and disposition of the trust property shall be held and deemed null and void and of no effect whatsoever and the trustee shall thereupon be required to transfer, convey, pay over and deliver any and all of the principal of the trust estate, together with any accumulated income 146
thereon, to Charles L. Cobb, his executor, administrator or assigns; provided, however, that in such event the trustee shall not be held chargeable or accountable for any payments, either of the principal or income, that may have been made by it in accordance with the terms of this indenture prior to service upon it of a certified copy of such judgment or decree so rendered; and further provided that in the event this indenture of trust is held to be null and void, as aforesaid, the trustee shall be entitled to its 147
costs, expenses and charges in the manner and upon the basis as provided in this indenture; and further provided that any act performed by the trustee pursuant to this trust indenture prior to the service upon the trustee of such certified copy of such judgment or decree, shall be valid and binding upon the grantor, Bruno Reinicke, Jr., Elisabeth Reinicke, the beneficiaries and all other parties.

Exhibit A, Annexed to Complaint

148 24. SCHEDULE "A"

BEING A LIST OF THE SECURITIES AND PROPERTY CONVEYED AND DELIVERED TO THE TRUSTEE UPON THE ESTABLISHMENT OF THIS TRUST AND COMPOSING THE INITIAL PRINCIPAL OF THIS TRUST ESTATE.

ASSETS

SECURITIES.

4,000 shares Common Stock—The Fleischmann
149 Co.

2 One Thousand Dollar par Value 6% Gold Bonds No. M-18432 and No. M-18433 Govt. of the Argentine Due Sept. 1, 1957.

20 Shares 7% Cumulative Series "A" Preferred Stock $100 par Value each of Geo. M. Forman & Co. Cert. No. 461—

100 Shares Capital Stock having $25 Par Value each of the Texas Corp. Cert. No. 64508—

150 100 Shares Class "A" Non-Cumulative $6.00 par Annum Stock of the General Baking Corp. Temporary Cert. No. 43654—

100 shares Capital Stock having $50 Par Value Each of the Anaconda Copper Mining Co. Cert. No. 139243—

20 shares Common Stock of the Electric Storage Battery Co. Cert. No. NY-01481—

2 Michigan Ave. and Eight Street Trust, Chicago Ill. Certificates of Beneficial Interest—

Exhibit A, Annexed to Complaint

REAL ESTATE

Lots Nine (9) and Ten (10) in Block Two (2) Dingee and McDaniels re-subdivision of Blocks Three (3) Six (6), Nine (9) Ten (10) and South One Half (S.½) of Block Eight (8) in Wilmette Village in Cook Co. Illinois, legal title to which is held by the Chicago Title & Trust Company, of Chicago, as trustee.

IN WITNESS WHEREOF the said Charles L. Cobb, Grantor, has hereto set his hand and seal and THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, has caused these presents to be signed by a Vice-President and its corporate seal to be hereunto affixed and attested by an Assistant Trust Officer as of the day and year first above written.

CHARLES L. COBB (SEAL)

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK,

By G E WARREN
Vice-President

Attest:

G. I. CUNE
Assistant Trust Officer

Exhibit A, Annexed to Complaint

154 State of Illinois,
County of Cook—ss.:

I, ROBERT P. MCARDLE, a Notary Public in and for the County of Cook, do hereby certify that Charles L. Cobb, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that he signed, sealed and delivered the said instrument as his free and voluntary act for the uses and
155 purposes therein set forth.

Given under my hand and official seal this 26th day of March, A. D. 1928.

ROBERT P. MCARDLE
Commission Expires Nov. 26, 1929.

State of New York,
County of New York—ss.:

156 I, F. W. GEBHARDT a Notary Public in and for said County, in the State aforesaid, do hereby certify that G. E. Warren and G. I. Cune personally known to me to be the same persons whose names are subscribed to the foregoing instrument as Vice-President and Assistant Trust Officer, respectively, of THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, a corporation and personally known to me to be such Vice-President and Assistant Trust Officer, respectively, appeared before me this day in per-

son and acknowledged that they signed, sealed 157
with the corporate seal of said corporation, and delivered the said instrument as their own free and voluntary act and as the free and voluntary act of said corporation for the uses and purposes therein set forth.

Given under my hand and notarial seal this 21st day of March, A. D. 1928.

F. W. GEBHARDT

(Notarial Stamp) 158

EXHIBIT B, ANNEXED TO COMPLAINT

DEPARTMENT OF JUSTICE

OFFICE OF ALIEN PROPERTY

Amendment to Vesting Order 4551

Re: Trust Indenture between Charles L. Cobb and the Chase National Bank of the City of New York dated March 21, 1928, as amended. 159
File No. D-28-8087; E & T 11214

Vesting Order 4551, executed January 29, 1945, is hereby amended to read as follows:

Under the authority of the Trading with the Enemy Act, as amended (50 U. S. C. App. and Sup. 1-40); Public Law 181, 82nd Congress, 65 Stat. 451; Executive Order 9193, as amended by Executive Order 9567 (3 CFR, 1943 Cum. Supp.; 3 CFR 1945 Supp.); Executive Order

160 9788 (3 CFR, 1946 Supp.) and Executive Order 9989 (3 CFR 1948 Supp.), and pursuant to law, after investigation, it is hereby found:

1. That Bruno Reinicke, Jr.; Elisabeth Reinicke; Bruno Carl Reinicke; Robert Hans Reinicke; Johanne Maria Margarete Elisabeth Reinicke; Klaus Reinicke; Hans Egon Schwarzburger; Ilse Schwarzburger Roth; Hans Adolf Roth; Heide Roth; Hans Eberhardt Schwarzburger; Karla Maria Rott
161 vom Baur; Fritz vom Baur; Gerd vom Baur; Roland Rott; Rose Lore Rott; Fritz Reinicke; Gertrud Ernst; Ella Schwarzburger; Charlotte Rott; the child or children, names unknown, of Bruno Reinicke, Jr., and Elisabeth Reinicke; descendants of any deceased child or children names unknown of Bruno Reinicke, Jr. and Elisabeth Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of
162 Charlotte Rott; issue, names unknown, of Ella Schwarzburger; and the heirs at law, names unknown, of Bruno Reinicke, Jr., who there is reasonable cause to believe on or since December 11, 1941, and prior to January 1, 1947, were residents of Germany, are and prior to January 1, 1947, were nationals of a designated enemy country (Germany);

2. All property in the possession, custody or control of the Chase National Bank of the

Exhibit B, Annexed to Complaint.

City of New York, as trustee under a certain indenture of trust dated March 21, 1928, between Charles C. Cobb and the Chase National Bank of the City of New York, as subsequently amended, subject to expenses of administration, is property which is and prior to January 1, 1947, was within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That the national interest of the United States requires that the persons identified in subparagraph 1 hereof be treated as persons who are and prior to January 1, 1947, were nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and it being deemed necessary in the national interest,

THERE IS HEREBY VESTED in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy

166 country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C. on April 6, 1953.

For the Attorney General:

(Signed) PAUL V. MYRON
Paul. V. Myron
Deputy Director
Office of Alien Property

167 (Official Seal)

I hereby certify that the within is a true and correct copy of the original paper on file in this office.

For the Attorney General:

Paul V. Myron, Deputy Director
Office of Alien Property

By LOYOLA M. BLANTON
168 Assistant to the Records Officer

EXHIBIT C, ANNEXED TO COMPLAINT

In reply, please refer 169
to File Number
D-28-8087

Amend. V.O. 4551
HGH:AFW:LJG:mfm

DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY
Washington 25, D. C.

DEMAND FOR PAYMENT AND DELIVERY OF
VESTED PROPERTY TO THE ATTORNEY GENERAL 170
OF THE UNITED STATES

April 15, 1953

The Chase National Bank of the City
of New York, Trustee
11 Broad Street
New York, New York

Re: Trust Indenture between Charles L. Cobb and the Chase National Bank of the City of New York dated March 21, 1928, as amended. 171

Gentlemen:

Enclosed is a certified copy of Amendment to Vesting Order 4551 executed for the Attorney General of the United States April 6, 1953 and filed with the Federal Register April 9, 1953, by which the Attorney General of the United States vested in himself the property described in subparagraph 2 of the Order.

For the purpose of identifying the accounts on the books and records of the Office of Alien

Exhibit C, Annexed to Complaint

Property, the account numbers listed on the attached sheet have been assigned.

Pursuant to subparagraph 2 of the Amendment to Vesting Order 4551 all the property in your possession, custody, or control, as trustee of the referenced trust, subject to expenses of administration is distributable to the Attorney General of the United States. Accordingly, you are hereby authorized and directed to deliver to the Office of Alien Property, Department of Justice, Washington 25, D. C. all the property described in the Amendment to the aforesaid Order. Checks are to be made payable to the order of the "Attorney General of the United States, Account No. .....," using the numbers assigned on the attached sheet.

There should be forwarded to this Office in advance of the hearing date copies of all reports and accountings which are filed in this proceeding; we should also be furnished with copies of any Court Orders entered thereon.

Please sign the acknowledgment of receipt on the attached copy of this letter of demand and return it in the enclosed envelope. Also kindly inform us as to your action in this matter.

Sincerely yours,

PAUL V. MYRON
Deputy Director
Office of Alien Property

By: HENRY G. HILKEN
Henry G. Hilken, Chief
Intercustodial and Property Branch

Enclosures

Answer of Herbert Brownell, Jr., Attorney General of United States

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[SAME TITLE.]

The defendant, Herbert Brownell, Jr., Attorney General of the United States, as successor to the Alien Property Custodian, answering the Complaint herein:

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1. Admits the allegations contained in Paragraphs 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 13, 14, and 23 of the Complaint.

2. Denies knowledge or information sufficient to form a belief as to the truth of any of the allegations set forth in Paragraphs 8, 18, and 19 of the Complaint.

3. Denies each and every allegation contained in Paragraphs 20 and 21 of the Complaint.

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4. Admits as to Paragraph 15 of the Complaint that a deficiency on account of gift tax for the year 1941 was claimed by the Commissioner of Internal Revenue against the plaintiff as trustee in the sum of $23,500.22, with interest from April 1, 1949, and further admits that this claim was rejected by the Tax Court of the United States, but denies that further litigation is necessary and denies that any reserve should be retained by the plaintiff for the payment of

178 further tax liability plus interest thereon and counsel fees.

5. As to Paragraph 16 of the Complaint denies the allegation that the Attorney General of the United States, as successor to the Alien Property Custodian, "purported" to vest the entire trust fund by "purporting" to amend Vesting Order 4551, since the Attorney General did, in fact, vest the entire net trust corpus by the
179 amendment of the said Vesting Order 4551.

6. As to Paragraph 17 of the Complaint admits that the Attorney General submitted to the jurisdiction of this Court in the action referred to in Paragraph 13 of the Complaint, but denies that the judgment referred to applies to the amendment to Vesting Order 4551, or to the legal consequences resulting from the issuance thereof.

180 7. As to Paragraph 22 of the Complaint denies that any of the persons named therein, as well as any other persons named in the Complaint, as defendants in this action have any interest in the trust other than the Attorney General of the United States, and therefore their names should be stricken from the Complaint as parties defendant.

FURTHER ANSWERING THE SAID COMPLAINT and as and for a first separate, distinct and affirmative defense to the alleged cause of action set

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forth in the Complaint, the defendant, Herbert Brownell, Jr., Attorney General of the United States, alleges:

8. He is the duly appointed, qualified, and acting Attorney General of the United States, and, as such, is successor to the Alien Property Custodian by virtue of Executive Order 9788, dated October 14, 1946 (11 Fed. Reg. 11981), pursuant to which there were transferred to him all authority, rights, privileges, powers, duties, 182
and functions vested in the Alien Property Custodian by Executive Order No. 9193, as amended, (7 Fed. Reg. 5205).

9. Charles L. Cobb, who was then a resident of the State of Illinois, executed and delivered to the Chase National Bank of the City of New York, a certain indenture of trust dated the 21st day of March, 1938 (a copy of the indenture is annexed to the Complaint herein marked Exhibit "A" and incorporated herein by reference) and 183
transferred and delivered to the said Chase National Bank of the City of New York certain property, set forth in Schedule A of said indenture, in trust, to hold, manage, care for, and protect and to collect the income from the said trust estate during the lives of Bruno Reinicke, Jr., and his wife, Elisabeth Reinicke.

10. The said Chase National Bank of the City of New York accepted the trust created by the said indenture of trust, and consented and agreed

184 to act as trustee under the indenture, and received the property pursuant to the terms of the indenture and thereafter continuously administered the trust and is now administering the same and is now holding the property constituting the principal and accumulated income of the said trust so created by the said indenture of trust at its office at 11 Broad Street, New York City, New York.

185 11. In a previous action brought by the plaintiff herein it was determined by the judgment of this Court, entered on the 17th day of February, 1939, and thereafter amended, that said Charles L. Cobb had no interest in the trust and was not the real creator of the trust created by the said indenture, but that Bruno Reinicke, then Bruno Reinicke, Jr., was the true creator of the said trust.

12. Acting under the authority of the Trad-
186 ing with the Enemy Act, as amended, and Executive Order No. 9095, as amended, James E. Markham, the then Alien Property Custodian of the United States on January 29, 1945 issued Vesting Order 4551 (copy of which is attached hereto marked Exhibit "A") vested in himself in the interest and for the benefit of the United States the following described property:

> "All right, title, interest and claim of any kind or character whatsoever of Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno

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Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; Klaus Reinicke, Hans Egon Schwarzburger, Ilse Schwarzburger Roth, Hans Adolf Roth, Heide Roth, Hans Eberhardt Schwarzburger, Karla Maria Rott vom Baur, Fritz vom Baur, Gerd vom Baur, Roland Rott, Rose Lore Rott, Fritz Reinicke, Gertrud Ernst, Ella Schwarzburger, Charlotte Rott, descendants of any deceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; issue, names unknown, of Fritz Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of Ella Schwarzburger; issue, names unknown, of Charlotte Rott; heirs at law, names unknown, of Bruno Reinicke, Jr.; and each of them, in and to the trust established under a certain indenture of trust dated March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York."

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13. The said Vesting Order No. 4551 was filed with the Division of the Federal Register on February 7, 1945, was published in the Federal Register on February 8, 1945, at 10 Fed. Reg. 1652 and certified copies thereof were served by mail upon the plaintiff, its counsel, and the Clerk of this Court on January 31, 1945.

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14. On April 6, 1953, the Attorney General of the United States as successor to the Alien Property Custodian issued an amendment to Vesting Order No. 4551, (a copy of said amendment is attached hereto and marked Exhibit "B") vesting in himself "all property in the possession, custody or control of The Chase National Bank of the City of New York, as trustee under that certain indenture of trust dated March 21, 1928, between Charles L. Cobb
191 and the Chase National Bank of the City of New York, as subsequently amended, subject to expenses of administration" to be held, used, administered, liquidated or otherwise dealt with in the interest of and for the benefit of the United States.

15. The said amendment to Vesting Order 4551 was filed with the Division of the Federal Register on April 9, 1953 and published on April 10, 1953, (18 Fed. Reg. 2052.)

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16. Demand for payment and delivery of the property vested by the amendment to Vesting Order 4551 was served by mail on the plaintiff herein on the 11th day of May, 1953, but the plaintiff has failed and refused to comply therewith by making payment and delivery as demanded and required.

FURTHER ANSWERING THE SAID COMPLAINT and as and for a second separate, distinct and affirmative defense to the alleged cause of action set

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forth in the Complaint, the defendant Herbert Brownell, Jr., Attorney General of the United States, alleges:

17. That the sole relief and remedy from the Amendment to the aforesaid Vesting Order is that provided by the Trading with the Enemy Act, as amended, (50 Stat. 411, 50 U. S. C. A. App. 1 et seq.).

18. The said Trading with the Enemy Act, as amended, confers sole and exclusive jurisdiction on the District Courts of the United States to give relief from erroneous Vesting Orders, and this Court therefore lacks jurisdiction to diminish the vested funds by setting up a reserve for possible litigation by the plaintiff. 194

WHEREFORE defendant demands judgment:

1. That the defendant be adjudged and decreed to be entitled to immediate possession of the property comprising the net corpus of the trust created by that certain indenture of trust dated March 21, 1928 by and between Charles L. Cobb, as grantor, and the Chase National Bank of the City of New York as trustee, with all income, accumulations, and increments thereon in the possession of or under the control of the plaintiff herein and without deduction for any reserves of any character whatsoever and that said plaintiff be ordered to account for and pay and deliver said property constituting the prin- 195

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cipal and income of said trust to the Attorney General of the United States, subject to all lawful fees and disbursements of said plaintiff as trustee, to be held by him in the interest of and for the benefit of the United States.

2. That this defendant have and recover his costs and disbursements herein incurred.

3. That this defendant have such other and
197 further relief as to the Court may seem just and equitable in the premises.

J. EDWARD LUMBARD,
J. Edward Lumbard,
United States Attorney for the Southern District of New York, Attorney for Defendant Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian, by Milton E.
198 Lacina, Ass't U. S. Attorney,
Office and Post Office Address:
U. S. Court House,
Foley Square,
New York 7, New York.

(Unverified.)

EXHIBIT A, ANNEXED TO ANSWER OF HERBERT BROWNELL, JR., ATTORNEY GENERAL OF UNITED STATES

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UNITED STATES OF AMERICA
OFFICE OF ALIEN PROPERTY CUSTODIAN

Vesting Order Number 4551

Re: Trust Indenture dated the 21st day of March, 1928 between the Chase National Bank of the City of New York and Charles L. Cobb
(File D-28-8087; E. T. Sec. 11214)

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Under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding;

That the property described as follows:

All right, title, interest and claim of any kind or character whatsoever of Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; Klaus Reinicke, Hans Egon Schwarzburger, Ilse Schwarzburger Roth, Hans Adolf Roth, Heide Roth, Hans Eberhardt Schwarzburger, Karla Maria Rott

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ferred upon it by the said Trust Indenture which are subject to the control of the said Bruno Reinicke during the period after this judgment becomes final and until the termination of hostilities with the German Reich and for such other further period as the control of the said Bruno Reinicke Jr. over the said administrative powers is subject to blocking or other Governmental control either of this country or of any government in Germany.

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"9. Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive the income of the said trust which had been accumulated as of the date of the making of the Vesting Order by the Alien Property Custodian #4551 to wit on January 29, 1945.

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"10. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian, is not entitled to receive any part of the accumulated income of said trust held by the said Trustee which has been collected of the said Trustee since the date of the said Vesting Order #4551.

"11. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive any income which may be collected hereafter during the lifetime

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of Bruno Reinicke, Jr., the settlor in the said trust.

"12. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian has not succeeded to the powers with respect to the management and disposition of the trust lodged in the said settlor, Bruno Reinicke, Jr. and his wife, Elisabeth Reinicke.

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"13. It was the intention of the Settlor that all of the income from said trust and the accumulated income thereof which should not be used for the children of said Bruno Reinicke, Jr. should be accumulated for the benefit of those ultimately entitled to take the corpus of the trust upon its termination.

"14. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States has no power to change the terms of the said trust indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, and to confer upon himself property rights superior to those of his predecessors in interest.

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"15. The power retained by the said Bruno Reinicke, Jr. to direct the payment of income is a personal power and the

244 Alien Property Custodian did not succeed to such power by reason of said Vesting Order #4551.

"16. The powers over the management of the trust fund retained by Bruno Reinicke, Jr. are also personal powers and the Alien Property Custodian did not succeed to said powers by the said Vesting Order."

245 8. The Attorney General of the United States as successor to the Alien Property Custodian by his agent, executed on April 6, 1953, an instrument in writing entitled Amendment to Vesting Order 4551 and defendant begs leave to refer to the copy of said instrument attached to the complaint, made a part thereof, and marked Exhibit B, said instrument is unlawful, unconstitutional and contrary to the provisions of the Trading with the Enemy Act and the provisions of the judgment heretofore made by 246 this Court and referred to above in paragraphs 6 and 7, and in circumvention of that judgment.

9. By reason of the foregoing the Attorney General of the United States as successor to the Alien Property Custodian is not entitled to payment and delivery of all and any property in the possession, custody or control of plaintiff as Trustee under said indenture of trust dated March 21, 1928 as amended, between Charles L. Cobb and the plaintiff.

Answer of Guardian ad Litem for Hans Dietrich Schaefer

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AS AND FOR A SECOND SEPARATE, DISTINCT AND PARTIAL DEFENSE, THE DEFENDANT HANS DIETRICH SCHAEFER, BY HIS GUARDIAN AD LITEM, UPON INFORMATION AND BELIEF, ALLEGES:

10. Defendant repeats and realleges the allegations contained in paragraphs 2 to 8 inclusive as if fully set forth herein.

11. That all matters in litigation in this action relating to the right, title, interest and claim of the Attorney General of the United States as successor to the Alien Property Custodian in and to the principal and income (accumulated and current) of the trust under said indenture of trust dated March 21, 1928, as amended, between Charles L. Cobb and the plaintiff and to the management and disposition of said trust have heretofore been finally adjudicated, determined and settled by judgment of the Supreme Court of the State of New York, New York County, dated January 30, 1948, in an action brought by the plaintiff against Bruno Reinicke and others to which action the Attorney General of the United States as successor of the Alien Property Custodian became a party defendant and the matters alleged in the complaint herein to the extent of the aforesaid matters have become and now are res judicata.

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Exhibit A, Annexed to Answer of Herbert Brownell, Jr., Attorney General of United States

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vom Baur, Fritz vom Baur, Gerd vom Baur, Roland Rott, Rose Lore Rott, Fritz Reinicke, Gertrud Ernst, Ella Schwarzburger, Charlotte Rott, descendants of any deceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; issue, names unknown, of Fritz Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of

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Ella Schwarzburger; issue, names unknown, of Charlotte Rott; heirs at law, names unknown, of Bruno Reinicke, Jr.; and each of them, in and to the trust established under a certain indenture of trust dated March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York,

is property payable or deliverable to, or claimed by, nationals of a designated enemy country, Germany, namely,

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Nationals:	Last Known Address:
Bruno Reinicke, Jr.	Germany
Elisabeth Reinicke	Germany
Bruno Carl Reinicke	Germany
Robert Hans Reinicke	Germany
Johanne Maria Margarete Elisabeth Reinicke	Germany

Exhibit A, Annexed to Answer of Herbert Brownell, Jr., Attorney General of United States

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Child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke	Germany
Klaus Reinicke	Germany
Hans Egon Schwarzburger	Germany
Ilse Schwarzburger Roth	Germany
Hans Adolf Roth	Germany
Heide Roth	Germany
Hans Eberhardt Schwarzburger	Germany
Karla Maria Rott vom Baur	Germany
Fritz vom Baur	Germany
Gerd vom Baur	Germany
Roland Rott	Germany
Rose Lore Rott	Germany
Fritz Reinicke	Germany
Gertrud Ernst	Germany
Ella Schwarzburger	Germany
Charlotte Rott	Germany
Descendants of any deceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke	Germany
Issue, names unknown, of Fritz Reinicke	Germany
Issue, names unknown, of Gertrud Ernst	Germany

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Exhibit A, Annexed to Answer of Herbert Brownell, Jr., Attorney General of United States

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Issue, names unknown, of Ella Schwarzburger	Germany
Issue, names unknown, of Charlotte Rott	Germany
Heirs at law, names unknown, of Bruno Reinicke, Jr.	Germany

209 That such property is in the process of administration by The Chase National Bank of the City of New York, as Trustee of the trust established under an indenture of trust dated March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York, acting under the judicial supervision of the Supreme Court of the State of New York, in and for the County of New York;

210 And determining that to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany);

And having made all determinations and taken all action required by law, including appropriate consultation and certification, and deeming it necessary in the national interest,

Exhibit A, Annexed to Answer of Herbert Brownell, Jr., Attorney General of United States

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HEREBY VESTS in the Alien Property Custodian the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in an appropriate account or accounts, pending further determination of the Alien Property Custodian. This Order shall not be deemed to limit the power of the Alien 212
Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall it be deemed to indicate that compensation will not be paid in lieu thereof, if and when it should be determined to take any one or all of such actions.

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this Order may, within one year from the date hereof, or within such further time as may be allowed, file with the Alien Property 213
Custodian on Form APC-1 a notice of claim, together with a request for a hearing thereon. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of Executive Order No. 9095, as amended.

Exhibit A, Annexed to Answer of Herbert Brownell, Jr., Attorney General of United States

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Executed at Washington, D. C. on January 29, 1945.

Signed JAMES E. MARKHAM
James E. Markham
Alien Property Custodian

(Official Seal)

(F. R. Doc. 45-2213; Filed, Feb. 7, 1945; 10:43 a. m.)

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(10 Fed. Reg. 1652; (February 8, 1945))

EXHIBIT B, ANNEXED TO ANSWER OF HERBERT BROWNELL, JR., ATTORNEY GENERAL OF UNITED STATES

DEPARTMENT OF JUSTICE
OFFICE OF ALIEN PROPERTY

Amendment to Vesting Order 4551

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Re: Trust Indenture between Charles L. Cobb and the Chase National Bank of the City of New York dated March 21, 1928, as amended.
File No. D-28-8087; E & T 11214

Vesting Order 4551, executed January 29, 1945, is hereby amended to read as follows:

Under the authority of the Trading with the

Exhibit B, Annexed to Answer of Herbert Brownell, Jr., Attorney General of United States

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Enemy Act, as amended (50 U. S. C. App. and Sup. 1-40); Public Law 181, 82nd Congress, 65 Stat. 451; Executive Order 9193, as amended by Executive Order 9567 (3 C. F. R., 1943 Cum. Supp.; 3 C. F. R. 1945 Supp.); Executive Order 9788 (3 C. F. R., 1946 Supp.) and Executive Order 9989 (3 C. F. R. 1948 Supp.), and pursuant to law, after investigation, it is hereby found:

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1. That Bruno Reinicke, Jr.; Elisabeth Reinicke; Bruno Carl Reinicke; Robert Hans Reinicke; Johanne Maria Margarete Elisabeth Reinicke; Klaus Reinicke; Hans Egon Schwarzburger; Ilse Schwarzburger Roth; Hans Adolf Roth; Heide Roth; Hans Eberhardt Schwarzburger; Karla Maria Rott vom Baur; Fritz vom Baur; Gerd vom Baur, Roland Rott; Rose Lore Rott; Fritz Reinicke; Gertrud Ernst; Ella Schwarzburger; Charlotte Rott; the

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child or children, names unknown, of Bruno Reinicke, Jr., and Elisabeth Reinicke; descendants of any deceased child or children, names unknown of Bruno Reinicke, Jr. and Elisabeth Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of Charlotte Rott; issue, names unknown, of Ella Schwarzburger; and the heirs at law, names unknown, of Bruno Reinicke, Jr., who there is reasonable cause to believe on or since

Exhibit B, Annexed to Answer of Herbert Brownell, Jr., Attorney General of United States

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December 11, 1941, and prior to January 1, 1947, were residents of Germany, are and prior to January 1, 1947, were nationals of a designated enemy country (Germany);

2. All property in the possession, custody or control of the Chase National Bank of the City of New York, as trustee under a certain indenture of trust dated

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March 21, 1928, between Charles C. Cobb and the Chase National Bank of the City of New York, as subsequently amended, subject to expenses of administration, is property which is and prior to January 1, 1947, was within the United States owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, the

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aforesaid nationals of a designated enemy country (Germany);

and it is hereby determined:

3. That the national interest of the United States requires that the persons identified in subparagraph 1 hereof be treated as persons who are and prior to January 1, 1947, were nationals of a designated enemy country (Germany).

Exhibit B, Annexed to Answer of Herbert Brownell, Jr., Attorney General of United States

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All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and it being deemed necessary in the national interest,

THERE IS HEREBY VESTED in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

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The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C. on April 6, 1953.

For the Attorney General:

(Signed) PAUL V. MYRON
Paul V. Myron
Deputy Director
Office of Alien Property

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(Official Seal)

Answer of Guardian ad Litem for Hans Dietrich Schaefer

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[SAME TITLE.]

The defendant Hans Dietrich Schaefer, by Samuel Anatole Lourie, his guardian ad litem, answering the complaint of the plaintiff herein:

1. Says that he is an infant under the age of fourteen years, and claims such interest in
227 the premises described in the complaint as he is entitled to and submits his rights to the protection of the Court.

AS AND FOR A FIRST SEPARATE, DISTINCT AND PARTIAL DEFENSE, THE DEFENDANT HANS DIETRICH SCHAEFER, BY HIS GUARDIAN AD LITEM, UPON INFORMATION AND BELIEF ALLEGES:

2. The defendant Hans Dietrich Schaefer was born on the 15th day of August, 1953, at Detroit,
228 in the State of Michigan, and he is an American citizen by birth, and he resides with his father, Claus Schaefer, and his mother, Johanna Maria Reinicke Schaefer, at No. 4222 Clements, Detroit, Michigan.

3. The defendant Hans Dietrich Schaefer is a grandson of Bruno Reinicke and a son of defendant Johanne Maria Reinicke Schaefer, and has a vested interest in and to the trust established under a certain Indenture of Trust

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dated March 21, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, a copy of which is annexed to the complaint, marked Exhibit A and made a part thereof, and begs leave to refer to the copy of said instrument.

4. By Vesting Order 4551 executed January 29, 1945, published in the Federal Register of February 8, 1945 (10 Fed. Reg. 1652) the Alien Property Custodian purported to vest in himself 230
to be held, used, administered, litigated, sold or otherwise dealt with in the interest and for the benefit of the United States the property described as follows:

> "All right, title, interest and claim of any kind or character whatsoever of Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, child or children, names unknown, 231
> of Bruno Reinicke, Jr., and Elisabeth Reinicke; Klaus Reinicke, Hans Egon Schwarzburger, Ilse Schwarzburger Roth, Hans Adolf Roth, Heide Roth, Hans Eberhardt Schwarzburger, Karla Maria Rott vom Baur, Fritz vom Baur, Gerd vom Baur, Roland Rott, Rose Lore Rott, Fritz Reinicke, Gertrud Ernst, Ella Schwarzburger, Charlotte Rott, descendants of any deceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth

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Reinicke; issue, names unknown, of Fritz Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of Ella Schwarzburger; issue, names unknown, of Charlotte Rott; heirs at law, names unknown, of Bruno Reinicke, Jr.; and each of them, in and to the trust established under a certain indenture of trust dated March 21, 1928 between Charles L. Cobb and The Chase National Bank
233 of the City of New York."

5. By Executive Order No. 9788, effective October 15, 1946 (11 Fed. Reg. 11981), the Office of Alien Property Custodian was terminated and all authority, rights and functions vested in such Office and in the Alien Property Custodian were transferred and vested in the Attorney General of the United States.

6. In another action (County Clerk's No.
234 6987–1944) brought in this Court by the plaintiff against substantially the same defendants, except the Attorney General of the United States, the Attorney General of the United States as successor to the Alien Property Custodian requested leave to intervene, and leave to intervene was granted to him by this Court; and the Attorney General filed an answer to the complaint and requested the Court to determine that the Trustee be directed, upon the termination of the trust, to deliver to the Attorney General of the United States the shares of the

trust comprised of the persons whose interests were acquired by the Attorney General by Vesting Order No. 4551 and that he succeeded to certain powers over the said trust. The determination so requested was denied by this Court. It was also requested in the said action by the Attorney General as successor to the Alien Property Custodian that the Court should determine that the entire principal of the said trust should be transferred to the Attorney General as successor to the Alien Property Custodian on the ground that all interest in the trust had vested in the Attorney General by said Vesting Order No. 4551. The determination so requested was denied.

7. A judgment dated January 30, 1948, was entered in the said action which judgment was affirmed by the Appellate Division of the Supreme Court and by the Court of Appeals in which it was adjudged that the account of the plaintiff as such Trustee be judicially settled, and in which it was further adjudged as follows in paragraphs 8 to 16, inclusive of the said judgment:

> "8. The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York is authorized in its discretion to exercise the administrative powers con-

Answer of Guardian ad Litem for Hans Dietrich Schaefer

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AS AND FOR A THIRD SEPARATE, DISTINCT AND PARTIAL DEFENSE, THE DEFENDANT HANS DIETRICH SCHAEFER, BY HIS GUARDIAN AD LITEM, UPON INFORMATION AND BELIEF, ALLEGES:

12. Defendant repeats and realleges the allegations contained in paragraphs 2 to 7 inclusive as if fully set forth herein.

251 13. The Attorney General of the United States as successor to the Alien Property Custodian, by his agent, executed on April 6, 1953, an instrument in writing entitled Amendment to Vesting Order 4551, and defendant begs leave to refer to the copy of said instrument attached to the complaint, made a part thereof, and marked Exhibit B.

14. At the time of the making of said instrument in writing entitled Amendment to Vesting
252 Order, the defendant Hans Dietrich Schaefer, an American citizen, was in being.

15. Said instrument is unlawful, unconstitutional and contrary to the provisions of the Trading with the Enemy Act and the provisions of the judgment heretofore made by this Court and referred to above in paragraphs 6 and 7.

16. Said instrument is contrary to the public policy and the policy of the United States Gov-

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ernment as proclaimed by the President of the United States on or about April 17, 1953.

WHEREFORE, the defendant Hans Dietrich Schaefer, by Samuel Anatole Lourie, his guardian ad litem, demands judgment as follows:

1. That the defendant Herbert Brownell, Jr., Attorney General of the United States as successor to the Alien Property Custodian, is not entitled to the trust fund of the trust involved herein, and that the said trust fund should not be transferred to the Attorney General of the United States as successor to the Alien Property Custodian.

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2. That the defendant Hans Dietrich Schaefer have and recover his costs and disbursements herein incurred.

3. That the defendant Hans Dietrich Schaefer have such other and further relief as to the Court may seem just and equitable in the premises.

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Dated, New York, N. Y., March 4, 1954

SAMUEL ANATOLE LOURIE,
Guardian ad litem for
Hans Dietrich Schaefer,
Defendant,
Office and P. O. Address,
15 Broad Street,
New York 5, N. Y.

(Verified March 4, 1954.)

Answer of Defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer

256

[SAME TITLE.]

The defendants, Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, by their attorney Samuel Anatole Lourie, answering the complaint herein:

257 1. Deny each and every allegation contained in Paragraph 16 of the complaint except admit that the Attorney General of the United States as successor to the Alien Property Custodian, by his agent, executed on April 6, 1953, an instrument in writing entitled Amendment to Vesting Order 4551 and beg leave to refer to the copy of said instrument attached to the complaint, made a part thereof and marked Exhibit B, and allege that the said instrument is unlawful, unconstitutional and contrary to the provisions of
258 the Trading with the Enemy Act and the provisions of a judgment heretofore made by the Supreme Court of the State of New York, New York County, dated January 30, 1948, in an action brought by the plaintiff against Bruno Reinicke and others to which action the Attorney General of the United States as successor to the Alien Property Custodian became a party defendant upon his prayer to intervene in the said action and that the said instrument is null, void and of no effect.

Answer of Defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer 259

2. Admit the allegations contained in Paragraph 20 of the complaint except deny the allegation that this Court can direct the plaintiff to transfer the principal of said trust fund to the Attorney General in view of the judgment heretofore made by this Court dated January 30, 1948, and referred to in the preceding paragraph.

As and for a First Separate, Distinct and Partial Defense, the Defendants Allege: 260

3. The defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, have an interest, subject to being divested, in and to the trust established under a certain indenture of trust dated March 21, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, a copy of which is annexed to the complaint, marked Exhibit A and made a part thereof, and beg leave to refer to the copy of said instrument. 261

4. By Vesting Order 4551 executed January 29, 1945, published in the Federal Register of February 8, 1945 (10 Fed. Reg. 1652) the Alien Property Custodian purported to vest in himself to be held, used, administered, litigated, sold or otherwise dealt with in the interest and for the benefit of the United States the property described as follows:

"All right, title, interest and claim of

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any kind or character whatsoever of Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, child or children, names unknown, of Bruno Reinicke, Jr., and Elisabeth Reinicke; Klaus Reinicke, Hans Egon Schwarzburger, Ilse Schwarzburger Roth, Hans Adolf Roth, Heide Roth, Hans

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Eberhardt Schwarzburger, Karla Maria Rott vom Baur, Fritz vom Baur, Gerd vom Baur, Roland Rott, Rose Lore Rott, Fritz Reinicke, Gertrud Ernst, Ella Schwarzburger, Charlotte Rott, descendants of any deceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; issue, names unknown, of Fritz Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of Ella Schwarzburger; issue, names un-

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known, of Charlotte Rott; heirs at law, names unknown of Bruno Reinicke, Jr.; and each of them, in and to the trust established under a certain indenture of trust dated March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York."

5. By Executive Order No. 9788, effective October 15, 1946 (11 Fed. Reg. 11981), the Office of Alien Property Custodian was terminated and

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all authority, rights and functions vested in such Office and in the Alien Property Custodian were transferred and vested in the Attorney General of the United States.

6. In another action (County Clerk's No. 6987-1944) brought in this Court by the plaintiff against substantially the same defendants, except the Attorney General of the United States the Attorney General of the United States as successor to the Alien Property Custodian requested leave to intervene, and leave to intervene was granted to him by this Court; and the Attorney General filed an answer to the complaint and requested the Court to determine that the Trustee be directed, upon the termination of the trust, to deliver to the Attorney General of the United States the shares of the trust comprised of the persons whose interests were acquired by the Attorney General by Vesting Order No. 4551 and that he succeeded to certain powers over the said trust. The determination so requested was denied by this Court. It was also requested in the said action by the Attorney General as successor to the Alien Property Custodian that the Court should determine that the entire principal of the said trust should be transferred to the Attorney General as successor to the Alien Property Custodian on the ground that all interest in the trust had vested in the Attorney General by said Vesting Order No. 4551. The determination so requested was denied.

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Answer of Defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer

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7. A judgment dated January 30, 1948, was entered in the said action which judgment was affirmed by the Appellate Division of the Supreme Court and by the Court of Appeals in which it was adjudged that the account of the plaintiff as such Trustee be judicially settled, and in which it was further adjudged as follows in paragraphs 8 to 16, inclusive of the said judgment:

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"8. The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York is authorized in its discretion to exercise the administrative powers conferred upon it by the said Trust Indenture which are subject to the control of the said Bruno Reinicke during the period after this judgment becomes final and until the termination of hostilities with the German Reich and for such other further period as the control of the said Bruno Reinicke Jr. over the said administrative powers is subject to blocking or other Governmental control either of this country or of any government in Germany.

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"9. Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive the income of the said trust which

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had been accumulated as of the date of the making of the Vesting Order by the Alien Property Custodian #4551 to wit on January 29, 1945.

"10. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian is not entitled to receive any part of the accumulated income of said trust held by the said Trustee which has been collected of the said Trustee since the date of the said Vesting Order #4551.

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"11. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive any income which may be collected hereafter during the lifetime of Bruno Reinicke, Jr., the settlor in the said trust.

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"12. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian has not succeeded to the powers with respect to the management and disposition of the trust lodged in the said settlor, Bruno Reinicke, Jr. and his wife, Elisabeth Reinicke.

"13. It was the intention of the Settlor that all of the income from said trust and the accumulated income thereof which should not be used for the children of said

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Bruno Reinicke, Jr. should be accumulated for the benefit of those ultimately entitled to take the corpus of the trust upon its termination.

"14. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States has no power to change the terms of the said trust indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, and to confer upon himself property rights superior to those of his predecessors in interest.

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"15. The power retained by the said Bruno Reinicke, Jr. to direct the payment of income is a personal power and the Alien Property Custodian did not succeed to such power by reason of said Vesting Order #4551.

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"16. The powers over the management of the trust fund retained by Bruno Reinicke, Jr. are also personal powers and the Alien Property Custodian did not succeed to said powers by the said Vesting Order."

8. The Attorney General of the United States as successor to the Alien Property Custodian, by his agent, executed on April 6, 1953, an instrument in writing entitled Amendment to

Answer of Defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer 277

Vesting Order 4551 and defendants beg leave to refer to the copy of said instrument attached to the complaint, made a part thereof, and marked Exhibit B, said instrument is unlawful, unconstitutional and contrary to the provisions of the Trading with the Enemy Act and the provisions of the judgment heretofore made by this Court and referred to above in paragraph 6 and 7, and in circumvention of that judgment.

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9. By reason of the foregoing the Attorney General of the United States as successor to the Alien Property Custodian is not entitled to payment and delivery of all and any property in the possession, custody or control of plaintiff as Trustee under said indenture of trust dated March 21, 1928 as amended, between Charles L. Cobb and the plaintiff.

AS AND FOR A SECOND SEPARATE DISTINCT AND PARTIAL DEFENSE DEFENDANTS ALLEGE: 279

10. Defendants repeat and reallege the allegations contained in paragraphs 3 to 8 inclusive as if fully set forth herein.

11. That all matters in litigation in this action relating to the right, title, interest and claim of the Attorney General of the United States as successor to the Alien Property Custodian in and to the principal and income (ac-

280 cumulated and current) of the trust under said indenture of trust dated March 21, 1928, as amended, between Charles L. Cobb and the plaintiff and to the management and disposition of said trust have heretofore been finally adjudicated, determined and settled by judgment of the Supreme Court of the State of New York, New York County, dated January 30, 1948, in an action brought by the plaintiff against Bruno Reinicke
281 and others to which action the Attorney General of the United States as successor of the Alien Property Custodian became a party defendant and the matters alleged in the complaint herein to the extent of the aforesaid matters have become and now are res judicata.

AS AND FOR A THIRD SEPARATE, DISTINCT AND PARTIAL DEFENSE

282 12. Defendants repeat and reallege the allegations contained in paragraphs 3 to 7 inclusive as if fully set forth herein.

13. The Attorney General of the United States as successor to the Alien Property Custodian, by his agent, executed on April 6, 1953, an instrument in writing entitled Amendment to Vesting Order 4551, and defendants beg leave to refer to the copy of said instrument attached to the complaint, made a part thereof, and marked Exhibit B.

Answer of Defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer

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14. Upon information and belief said instrument is unlawful, unconstitutional and contrary to the provisions of the Trading with the Enemy Act and the provisions of the judgment heretofore made by this Court and referred to above in paragraphs 6 and 7.

15. Upon information and belief said instrument is contrary to the public policy and the policy of the United States Government as proclaimed by the President of the United States on or about April 17, 1953.

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WHEREFORE, defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer demand judgment as follows:

1. That the defendant Herbert Brownell, Jr., Attorney General of the United States as successor to the Alien Property Custodian, is not entitled to the trust fund of the trust involved herein, and that the said trust fund should not be transferred to the Attorney General of the United States as successor to the Alien Property Custodian.

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2. That the defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer have and recover their costs and disbursements herein incurred.

3. That the defendant Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria

Answer of Defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer

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Reinicke Schaefer have such other and further relief as to the Court may seem just and equitable in the premises.

SAMUEL ANATOLE LOURIE
Attorney for Defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer

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Office and P. O. Address
15 Broad Street
New York 5, N. Y.

(Verified by Defendants Johanne Maria Reinicke Schaefer February 24, 1954, Bruno C. Reinicke March 2, 1954, and Robert Hans Reinicke March 4, 1954.)

Infants' Answer by Guardian ad Litem

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[SAME TITLE.]

The defendants, Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd vom Bauer, Christoph Rott, Tilo Koster and Sitta Koster, answering the complaint herein

by Arthur J. O'Leary, their Guardian ad Litem, 289
allege:

Upon information and belief, that the said defendants are infants; that they are strangers to all and singular the matters and things set forth in the complaint in this action; and they claim such interest in the property described in the said complaint as they are entitled to, and submit their rights and interests therein and in this action to the protection of this Court.

Dated, New York, N. Y. 290
March 3, 1954.

HANS ULRICH SCHWARZBURGER
ELISABETH SCHWARZBURGER
CHRISTA SCHWARZBURGER
HANS ADOLF ROTH
HEIDE ROTH
CHRISTEL ROTH
EIKE ROTH
UWE ROTH
ECKARD ROTH 291
HANS EBERHARD SCHWARZBURGER
SABINE SCHWARZBURGER
BERND VOM BAUR
CHRISTOPH ROTT
TILO KOSTER
SITTA KOSTER

BY: /S/ ARTHUR J. O'LEARY
Guardian ad Litem
Seventy Pine Street
Borough of Manhattan
New York 5, New York

(Unverified.)

Objections to Account by Herbert Brownell, Jr., Attorney General of United States

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[SAME TITLE.]

The undersigned, attorney for Herbert Brownell, Jr., Attorney General of the United States, as successor to the Alien Property Custodian, and a person interested in the trust under indenture dated March 21, 1928, between Charles L. Cobb and the Chase National Bank of the City
293 of New York, by reason of Vesting Order 4551 and the amendment thereto, hereby makes and files objections to the account of proceedings and the supplement thereto of the Chase National Bank of the City of New York, as trustee under said indenture, heretofore filed in this Court, as follows:

1. Objects to Schedule C of the account wherein the accountant claims credit for the payment to itself on May 8, 1953, in the sum of $250.00,
294 on account of alleged expenses in preparation of Schedules of accounting to May 8, 1953, since the accountant has failed to particularize, itemize, or otherwise identify the expenses so claimed and in the absence of such clarifying statement the commissions paid to the accountant should be deemed sufficient compensation, and further objects to Schedule C of the account in that such a payment is improper and unauthorized because the same is not due until passed upon and allowed by this Court.

Objections to Account by Herbert Brownell, Jr., Attorney General of United States

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2. Objects to Schedule CC of the supplemental account wherein the accountant claims credit for payment of attorneys fees totalling $12,500.00, and objectant requests that the Court pass upon the reasonableness of such fees when considered in light of the services performed and the attorneys fees heretofore paid, and further objects to Schedule CC of the supplemental account in that such payments are improper and unauthorized because the same are not due until passed upon and allowed by this court. 296

Dated: New York, New York, February 1954.

J. Edward Lumbard
J. Edward Lumbard
United States Attorney for the
Southern District of New York,
Attorney for Objectant Herbert
Brownell, Jr., Attorney General
of the United States, as suc-
cessor to the Alien Property
Custodian 297
Office and Post Office Address
United States Court House
Foley Square
New York 7, New York

To:

Clerk of the Supreme Court
of the State of New York,
County of New York

Thomas A. Ryan, Esquire
Attorney for accountant

(Unverified.)

Report of Guardian ad Litem of Hans Dietrich Schaefer

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[SAME TITLE.]

To the Supreme Court of the State of New York:

SAMUEL ANATOLE LOURIE, for his report as Guardian ad Litem, respectfully shows:

APPOINTMENT OF GUARDIAN

299

By order of this Court, dated February 26, 1954, I was appointed Guardian ad Litem for Hans Dietrich Schaefer, infant defendant, to appear for him in this action, and to defend it on his behalf. I duly qualified as such Guardian ad Litem by executing and filing a consent and affidavit of responsibility.

NATURE OF THE ACTION

300

The Chase National Bank of the City of New York brought this action for the judicial settlement of its account as Trustee under the Trust Indenture made on March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York. By reason of the fact that the Attorney General as successor to the Alien Property Custodian (hereinafter briefly "Custodian") in a letter dated April 15, 1953, signed by Paul V. Myron, Deputy Director, Office of Alien Property, by Henry G. Hilken,

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directed the plaintiff trustee to deliver the trust fund to the Custodian, the plaintiff asked the Court to instruct it as to the disposition to be made of the principal of the trust. It also asked that moneys be retained for taxes and for counsel fees for future litigation in the event that the Court should direct payment to the Attorney General as successor to the Alien Property Custodian, of the principal of this trust.

The Custodian, who was made a party defendant to this action, appeared and filed an answer. 302
In his answer the Custodian alleged certain facts as to an instrument entitled "Amendment to Vesting Order 4551", dated April 6, 1953, and demanded judgment adjudging him to be entitled to immediate possession of the corpus and income of the trust and ordering the payment and delivery of said property to him after the deduction of all expenses and charges.

I appeared for Hans Dietrich Schaefer, and filed an answer on his behalf. In the answer the infant defendant submitted his rights and in- 303
terests to the protection of the Court, and interposed three separate, distinct and partial defenses. Briefly summarized, the defenses are:

First Defense. Hans Dietrich Schaefer is an American citizen by birth and has a contingent remainder interest in the trust involved herein. The instrument entitled "Amendment to Vesting Order 4551", dated April 6, 1953, purporting to be a so-called "*res* vesting order", is unlawful, unconstitutional and contrary to the provisions

304 of the Trading with the Enemy Act, as amended, and the provisions of the judgment duly made and entered by this Court on January 30, 1948, and in circumvention of that judgment. Under the circumstances, the Custodian is not entitled to payment and delivery of all and any property in the possession of the Trustee.

Second Defense. That all matters in litigation in this action relating to right, title and interest of the Custodian in and to the principal and in-
305 come of the trust have heretofore been finally adjudicated by the prior judgment of this Court and the matters alleged in the complaint herein to the extent of the aforesaid matters are res judicata.

Third Defense. The instrument entitled "Amendent to Vesting Order 4551" dated April 6, 1953, is contrary to the public policy and the policy of the United States Government as proclaimed by the President on or about April 17, 1953.

306 The infant defendant demands judgment as follows: (1) That the Custodian is not entitled to the trust fund and that the trust fund should not be transferred to him; (2) That the infant have and recover his costs; and (3) That he have such other and further relief as to the Court may seem just and equitable in the premises.

The answer of defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer admits certain allegations in the complaint and denies others, and interposes substantially the same defenses.

Report of Guardian ad Litem of Hans Dietrich Schaefer

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Arthur J. O'Leary, Esq., who was appointed Guardian ad Litem of certain other infant defendants, appeared and filed an answer on their behalf, alleging that the infants for whom he is Guardian ad Litem are "strangers to all and singular the matters and things set forth in the complaint in this action; and that they claim such interest in the property described in the said complaint as they are entitled to, and submit their rights and interest therein and in this action to the protection of this Court." 308

The issues thus raised and joined by the pleadings of the parties herein were tried at Special Term, Part III, before Hon. Benjamin F. Schreiber, Justice of the Supreme Court, on April 9, 1954. The contentions of the parties are more fully set forth in the briefs and reply briefs which have been exchanged after the trial and submitted to this Court. The matter is awaiting decision.

THE TRUST INDENTURE 309

The trust indenture was executed on March 21, 1928, at Chicago, Illinois, by Charles L. Cobb with The Chase National Bank of the City of New York as Trustee. In 1941 it was determined, among other things, in appropriate legal proceedings that Bruno Reinicke, Jr. was in fact the true settlor of the trust and that Charles L. Cobb acted as a nominee. The trust was created primarily for the benefit of the children of Bruno Reinicke, Jr. The trust indenture pro-

310 vides that the net income of the trust is to be added to the principal thereof at the end of each quarter year unless the settlor shall direct the Trustee to pay such net income, or part thereof, to anyone, or all of the children, or to him or to anyone he might select for the benefit of such child or children. It is also provided that if the settlor shall notify the Trustee in writing that he has returned to the United States and intends to become a citizen of the
311 United States, he may direct the Trustee to pay him personally one-half of the net income. Upon the death of Bruno Reinicke, Jr. and his wife, the principal and any accumulated income is directed to be divided into as many shares as there shall then be children of Bruno Reinicke, Jr. living and children who shall have theretofore died leaving a descendant or descendants living. The shares of children living at the time the trust was established are continued in trust, the principal being payable to them in
312 certain proportions from the time they reach age 21 until they reach age 36, at which time they are entitled to the full payment of their respective shares. The share of any child born subsequent to the execution of the indenture is payable to him or her at age 21. As to any child who dies prior to the termination of the trust, leaving descendants, the share he would have received is payable to his descendants per stirpes. If any child surviving both parents dies before reaching 21, his share is payable to his descendants per stirpes. If at the termination

313 of the trust there are no living descendants of the settlor and his wife, the principal of the trust is payable to certain nephews and nieces or their descendants, and if no such nephew or niece or descendant of a nephew or niece is then surviving, the principal is payable to heirs-at-law of the settlor under the laws of the State of Illinois.

The indenture by its terms is to be construed under the laws of Illinois.

314 Under Article 7 of the indenture, the Trustee is given very broad investment powers. These powers are limited, however, by provisions which require that their exercise by the Trustee must have the approval of the settlor while he lives, the approval of his wife following his death, and thereafter, the approval of the majority of the beneficiaries of the trust who shall have attained the age of 21 years. In a prior action before this Court it was determined, among other things, that the Custodian has not succeeded

315 to any power of management or disposition, and that the Trustee is authorized to exercise its discretion in the sale of securities and reinvestment of the proceeds thereof during the period when no communication can be had with the settlor and his wife.

In the prior action before this Court it was also determined that the Custodian's "property rights are simply co-extensive with those of the beneficiaries whom he has succeeded. This precludes any power to change the terms of the

316 original indenture and to confer on the Attorney General property rights superior to those of his predecessor in interest". (The decision of Mr. Justice Schreiber reported at 76 N. Y. S. 2d 163, aff'd. by the Appellate Division in 276 App. Div. 831 and by the Court of Appeals 301 N. Y. 602). It was further determined that "At this time, remainder interests are essentially contingent and the identity of the ultimate remaindermen is unascertainable".

317 From the time the trust was created on March 21, 1928, to January 1, 1937, the income was accumulated because no direction for payment of the income was received by the Trustee. Beginning with the year 1937 and until March 21, 1941, the income of the trust was applied to the maintenance of the children of the settlor, pursuant to the direction received by the Trustee from the settlor as set forth in the settlor's letter of February 18, 1937. The income since March 21, 1941 has been accumulated. By the

318 judgment dated January 30, 1948, entered in the prior action by this Court it was determined that the Custodian is not entitled to (a) the income which has been accumulated as of the date of the making of the Vesting Order 4551 on January 29, 1945, (b) to the income collected since that date, and (c) to the income which may be collected hereafter during the lifetime of Bruno Reinicke, Jr., the settlor in the said trust.

Bruno Reinicke, Jr., the settlor, his wife,

319

Elisabeth Reinicke, and their three children, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Reinicke Schaefer, defendants herein, are still living. Bruno Carl Reinicke and Robert Hans Reinicke were born in Chicago, Illinois, on February 10, 1921, and October 8, 1923, respectively. They were declared to be residents of Cook County, Illinois, in the trust indenture. All three above-named children are presently residing in the United States.

320 Hans Dietrich Schaefer was born on August 15, 1953, at Detroit, Michigan. He is a grandson of Bruno Reinicke, Jr., the creator of the trust, and a son of Claus Schaefer and Johanne Maria Reinicke Schaefer. He resides with his parents. He has a contingent remainder interest in the trust.

TRUSTEE'S ACCOUNT OF PROCEEDINGS

321 The account of proceedings of plaintiff as Trustee for the period from March 21, 1928 to July 12, 1938 was judicially settled and allowed by a judgment of this Court entered on February 17, 1939, as amended by order dated March 7, 1941.

The account of proceedings of the plaintiff as Trustee for the period from July 12, 1938 to October 19, 1944, was judicially settled and allowed by a judgment of this Court dated January 30, 1948.

The account of proceedings of the plaintiff

322 as Trustee for the period from October 19, 1944 to May 8, 1953 (hereinafter "Main Account") and for the period from May 9, 1953 to August 4, 1953 (hereinafter "Supplemental Account") are the subject of this action.

The following are the summary statements of the Main and Supplemental Accounts as to principal and as to income:

AS TO PRINCIPAL (MAIN ACCOUNT)

323 *Charges*

Amount of all property on hand October 19, 1944, date of our last account as set forth in Schedule "A"	$617,470.65	
Amount of all additional property received as set forth in Schedule "A-1"	116,576.75	
Amount of all increases on the sale or disposition of property as set forth in Schedule "B"	1,994.47	$736,041.87

Credits

Amount of all decreases on the sale or disposition of property as set forth in Schedule "B"	$ 35,100.45	

Report of Guardian ad Litem of Hans Dietrich Schaefer

325

Amount of all payments made for administration expenses as set forth in Schedule "C"	$ 13,795.64	
Amount of all funds transferred to income as set forth in Schedule "D"	5,311.24	$ 54,207.33
Leaving a balance of consisting of property, as set forth in Schedule "E"		$681,834.54

326

As to Principal (Supplemental Account)

Balance as shown in main account Schedule E		$681,834.54
Amount of all decreases as set forth in Schedule BB	$ 9.77	
Amount of all payments made for administration expenses as set forth in Schedule CC	12,623.35	12,633.12
		$669,201.42

327

As to Income (Main Account)

Charges

Amount of all income on hand October 19, 1944, date of our last account	$ 21,478.58

328

Amount of funds transferred from principal	$ 5,311.24	
Amount of all income collected as set forth in Schedule "F" (Personal Property)	131,074.12	
Amount of all income collected as set forth in Schedule "F-1" (Real Property)	3,034.15	$160,898.09

329

Credits

Amount of losses upon sale of assets constituting invested income as set forth in Schedule "I"	$ 20.52	
Amount of all payments made for administration expenses as set forth in Schedule "G" (Personal Property)	42,346.79	
330 Amount of all payments made for administration expenses as set forth in Schedule "G-1" (Real Property)	1,501.29	
Amount of all funds transferred to principal as set forth in Schedule "J"	116,576.75	

331

Amount of accrued interest on purchase of securities to be subsequently refunded upon next interest date as set forth in Schedule "H"	$ 62.36	$160,507.71
Leaving an income cash balance of		$ 390.38

332

As to Income (Supplemental Account)

Balance as shown in main account		$ 390.38
Amount of income collected as set forth in Schedule FF	$ 5,088.68	5,088.68
		$ 5,479.06

333

Schedules of Main and Supplemental Accounts

In Schedule A of the Main Account the Trustee states that the inventory value of all property constituting the corpus of the trust estate on October 19, 1944, date of the last accounting, was $617,470.65. This is a correct statement of the amount with which the Trustee was charged at the close of the prior judicial accounting, and

334

consequently a correct statement of the corpus at the opening of this accounting period.

Schedule A-1 of the Main Account is a statement of all additional property received constituting corpus of the trust estate in the total sum of $116,576.75. Pursuant to the terms of the indenture, as aforesaid, the income is accumulated and added to the principal and all of the additional property resulted from transfers from the income account of this trust. The cash transfers amounted to $38,626.47 and the balance $77,950.28 represents the inventory value of $78,000 of United States of America Treasury Series "E" Bonds which had been purchased out of income. The Trustee has charged itself with the correct amount of transfers from income to principal.

335

Schedule B of the Main Account is a statement showing all sales and changes in property received by the accountant, purchases, and any and all increases or decreases in the value thereof. The purchases and sales reported in this Schedule are all at fair market value. The Trustee reports a gain of $1,994.47 and a realized loss in the total sum of $35,100.45. The net decrease thus amounted to $33,105.98. That decrease represents the difference between the inventory values of $894,033.58 set up years ago and the total of proceeds of sale and the items still held taken at inventory values in the sum of $860,927.60. The principal items of decrease resulted from the sale of 300 shares of Standard Brands,

336

337

Inc., common, on December 27, 1950,—$27,0?6.74 and of sale of real estate—$6,470.05 (interest in Lots #9 and 10 Block #2, Dinzee & McDaniels re subdivision of Blocks #3, 6, 9, 10 and south one-half block#8—Wilmette Village (703 Park Ave.) Cook County, Illinois, legal title to which is held by the Chicago Title & Trust Co., Chicago, Ill. as Trustee . . . $16,000.00). The depreciation did not take place during the accounting period but occurred prior thereto as more fully explained below.

338

Schedule BB of the Supplemental Account shows redemption of 32,000 U. S. A. Treasury Certificates of Indebtedness Series "B" on June 1, 1953 for $32,000, the inventory value of which was $32,009.77, and thus resulting in a decrease of $9.77.

In Schedule C of the Main Account the Trustee states all payments made by it for necessary expenses incurred in the administration of the trust chargeable against principal. The amounts expended for legal services were paid pursuant to court order. All of the items are reasonable in amount and necessary charges against principal.

339

In Schedule CC of the Supplemental Account the Trustee shows payments of legal fees to the Trustee's attorney for services rendered on question "gift tax liability" and disbursements $5,123.35 and for services in the administration of trust and proceedings for final settlement of Trustee's account $7,500.00. Testimony was

340 taken at the trial on these two items, and the Court approved these payments as reasonable. In my opinion these fees are fair and reasonable and I so report to the Court.

In Schedule D the Trustee shows cash transfers from principal to income account to cover part of 1952 Federal income tax in the sum of $4,739.90 and to provide funds for payment of Trustee's commission on income $571.34.

Schedule E of the Main Account is a statement
341 of all property constituting the corpus of the trust estate on May 8, 1953, (date of the Main Account). On April 19, 1954, I examined the securities at the vaults of the Trustee. I report that all of the securities are actually on hand with the exception of 32,000 U. S. A. Treasury Certificates of Indebtedness Series "B" 1-⅞% due June 1, 1953, which have been redeemed as reported in Schedule BB of the Supplemental Account. The proceeds were properly credited to principal.

342 The total inventory value of the corpus as shown in Schedule E is $681,834.54. The market value as of May 8, 1953 was $432,126.10. The decrease is principally due to the difference between the inventory value of the Standard Brands, Inc. common stock and the market value as of May 8, 1953. As can be seen from Schedule A attached to the trust indenture the Trustee received upon the establishment of this trust 4,000 shares of The Fleischmann Co. common stock. Subsequently, as a result of merger and

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capital changes the Trustee eventually held in place of the Fleischmann Co. stock 4,250 shares of Standard Brands, Inc. The Trustee sold 300 shares, as shown above in discussing Schedule E, leaving the present balance of 3,950 shares, the inventory value of which goes back to the value assigned to the Fleischmann stock in 1928. As can be seen from the account of proceedings rendered heretofore the market value of the 4,250 shares of Standard Brands as of February 3, 1944, was $124,312.50 and as of October 19, 344
1944, $125,375.00. There was a sale of 300 shares on December 27, 1950 for $6,506.86. The 3,950 shares held by the Trustee had as of May 8, 1953, the market value of $112,081.25. It follows that during this accounting period there has been little change in value. The substantial unrealized decrease took place during the prior periods which is a matter embraced in the prior actions. Therein the accounts showing the decrease have been judicially approved and settled. Consequently, the matter is res judicata to that 345
extent. In this connection it should be borne in mind that under Article 7 of the Indenture the Trustee's investment powers are circumscribed by provisions which require that their exercise by the Trustee must have the approval of the settlor while he lives. Only after the judgment dated January 20, 1948, rendered in the prior action was the Trustee free to sell without Reinicke's approval.

Unrealized decreases are shown with regard

346 to the following items: Great Northern Railway, Borden Company and Continental Illinois National Bank stock. However, I found that in each case the market value of these securities was higher on May 8, 1953, than at the opening of the accounts on October 19, 1944. The decrease goes back to the earlier accounting periods. The Liggett Myers stock having on May 8, 1953 a market value of $15,500 for a market value of $16,350 on October 19, 1944, shows a
347 depreciation in value of $850 during the current period. The George M. Forman & Co. stock had an inventory value of $1,970 and no market value as of May 8, 1953. No value was shown for this stock on the prior accounting. The real property taken at inventory value of $16,000.00 was sold for $9,700; upon deduction of expenses it resulted in a loss of $6,470.05. This real property was part of the initial principal.

Upon examination of Schedule E and comparing the same with the corresponding Schedule
348 in the prior accounting, and considering all the facts and circumstances I have come to the conclusion that the investments of this trust during the accounting period have been supervised with prudence and care.

Schedule F of the Main Account is a statement of all income collected by the Trustee from October 19, 1944 to May 9, 1953, with the exception of income from real estate. The total sum is $131,074.12. Schedule F-1 is a statement of all income received from real property up to

August 5, 1948 in the sum of $3,034.15 (the real property was sold on August 17, 1948). 349

Schedule FF in the Supplemental Account is a statement of all income collected by the Trustee from May 9, 1953 to August 4, 1953, in the total amount of $5,088.68.

Schedule G is a statement of all payments made by the Trustee for necessary expenses incurred in the administration of the trust chargeable against income. In my opinion all payments were proper. 350

Schedule G-1 is a statement of all payments made from income in connection with the real property.

Schedule H is a statement of accrued interest advanced on purchases of securities to be subsequently refunded on next interest date in the amount of $62.36.

Schedule I is a statement of investments made by the Trustee out of income showing disposition of the same and any and all increases and decreases in value thereof. 351

Schedule J is a statement of funds transferred from income to corpus of trust showing the transfer of $38,626.47 in cash and $78,000 in U. S. A. Treasury Bonds at the value of $77,950.28. This corresponds with Schedule A-1 wherein the Trustee has properly charged itself with this addition to the corpus.

Schedule K is a statement showing the computation of principal commissions due the Trus-

352 tee upon this accounting. The computation is correct.

CONCLUSION

From my examination of the accounts, the trust indenture, previous judicial settlements of intermediate accounts of proceedings of the Trustee, and consideration of all relevant facts, I have concluded that the accounts of proceedings for the periods from October 19, 1944 to
353 May 8, 1953, and from May 9, 1953 to August 4, 1953, are correct, and I so report. I have no objection to the judicial settlement of these accounts as filed.

Dated: New York, April 29, 1954.

Respectfully submitted,

/s/ SAMUEL ANATOLE LOURIE
Guardian ad Litem for Hans
354 Dietrich Schaefer

(Verified April 29, 1954.)

Report of Guardian ad Litem for Infant Defendants 355

[SAME TITLE.]

To the Supreme Court of the State of New York:

The undersigned, ARTHUR J. O'LEARY, makes the following Report as Guardian ad Litem:

356

By order of this Court, dated March 1, 1954, I was appointed Guardian ad litem for the infant defendants, Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Baur, Christoph Rott, Tilo Koster and Sitta Koster. I qualified as guardian ad litem for these fifteen infant defendants by filing an affidavit of responsibility and a consent 357 to act. Thereafter I appeared and filed an Answer in behalf of these infants and I have represented them throughout the pendency of the action.

NATURE OF THE ACTION

The Chase National Bank seeks the judicial settlement of its accounts as trustee and in the action, the Attorney General of the United

358 States seeks a judgment directing that all of the assets of the trust be turned over to him under a Vesting Order issued by him under the terms of the Federal Statute known as the Trading with the Enemy Act. The issue thus raised with respect to the vesting of the trust assets in the Attorney General, as Alien Property Custodian, was tried at Special Term, Part III, before Mr. Justice Schreiber and briefs have been submitted after trial and the matter is awaiting
359 decision. The contentions in behalf of the infants represented by me have been set forth in a separate brief which I served on all parties and submitted to the Court. Therefore that issue will not be discussed in this Report. Here I confine myself to the Accounts.

THE TRUST AGREEMENT

The trust indenture is dated March 21, 1928
360 and is made between Charles L. Cobb as Settlor and The Chase National Bank of New York as Trustee. It may be noted at this time that in a prior action it was determined that Charles L. Cobb who was named as Settlor in the trust indenture actually had no interest in the trust and was not the real creator of the trust but that the true creator of the trust was the defendant Bruno Reinicke.

This trust was created primarily for the benefit of the children of the settlor. The trustee is directed to add the income of each quarter

361 to the principal of the trust unless the settlor shall give directions for the application of that income to the support and maintenance of his children. A provision of this kind for the accumulation of income is valid under the laws of Illinois under which this trust is governed.

Upon the death of the survivor of the settlor and his wife the principal is to be divided into as many equal shares as there are then children of the settlor surviving with a provision for children of the settlor who have previously died 362 leaving a descendant or descendants then living. The shares in trust for the living children are to be held until the beneficiaries arrive at certain ages when the principal is to be distributed. The children have vested interests subject to being divested and in that sense what they actually have are contingent remainders. If there are no surviving children or descendants of children their provision is made for the distribution of the principal to nephews and nieces and their descendants. The infants I represent are de- 363 scendants of the nephews and nieces and they have contingent remainders in the entire fund.

The Accounts

The main accounts cover the period from October 19, 1944 to May 8, 1953. The supplemental accounts are brought down to August 4, 1953.

Report of Guardian ad Litem for Infant Defendants

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The following is a summary statement of the main account:

AS TO PRINCIPAL

Charges

Amount of all property on hand October 19, 1944, date of the last account as set forth in Schedule "A"	$617,470.65	
365 Amount of all additional property received as set forth in Schedule "A-1"	116,576.75	
Amount of all increases on the sale or disposition of property as set forth in Schedule "B"	1,994.47	$736,041.87

Credits

366 Amount of all decreases on the sale or disposition of property as set forth in Schedule "B"	$ 35,100.45	
Amount of all payments made for administration expenses as set forth in Schedule "C"	13,795.64	

367

Amount of all funds transferred to income as set forth in Schedule "D"	$ 5,311.24	$ 54,207.33
Leaving a balance of consisting of property, as set forth in Schedule "E"		$681,834.54

As to Income

368

Charges

Amount of all income on hand October 19, 1944, date of the last account	$ 21,478.58	
Amounts of funds transferred from principal	5,311.24	
Amount of all income collected as set forth in Schedule "F" (Personal Property)	131,074.12	
Amount of all income collected as set forth in Schedule "F-1" (Real Property)	3,034.15	$160,898.09

369

370

Credits

Amount of losses upon sale of assets constituting invested income as set forth in Schedule "I"	$ 20.52	
Amount of all payments made for administration expenses as set forth in Schedule "G" (Personal Property)	42,346.79	
371 Amount of all payments made for administration expenses as set forth in Schedule "G-1" (Real Property)	1,501.29	
Amount of all funds transferred to principal as set forth in Schedule "J"	116,576.75	
Amount of accrued interest on purchase of securities to be 372 subsequently refunded upon next interest date as set forth in Schedule "H"	62.36	$160,507.71
Leaving an income cash balance of		$ 390.38

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SCHEDULES OF MAIN ACCOUNT

In Schedule A the trustee states that the corpus in property and cash, as of October 19, 1944, amounted to $617,470.65. This is the amount with which the trustee was charged at the close of the prior judicial accounting. This schedule is a correct statement of the corpus at the opening of this accounting period:

Schedule A-1 is a statement of the receipt of additional property. All of this additional property resulted from transfers from the income account of this trust. Under the terms of the indenture the income is accumulated and added to principal. 374

Here the trustee charges itself with the transfer from income to principal of a total of $116,576.75 of which $77,950.28 is the inventory value of $78,000. of U. S. Treasury bonds which had been purchased out of income; the cash transfers amounted to $38,626.47. The trustee has charged itself with the correct amount of transfers from income to principal. 375

Schedule B is a statement of all sales and changes of investments during the accounting period. The purchases and sales reported in this schedule are all at fair market values. Over this ten year period there was a reported gain of $1,994.47 and a realized loss of $35,100.45, the net decrease being about $33,200. That decrease represents the difference between the

376 sales price and the inventory values set up years ago. The depreciation did not take place during the accounting period but occurred prior thereto.

In Schedule C the trustee states the amounts expended out of principal for administration expenses. The amounts expended for legal services were paid pursuant to court order. All of the items are reasonable in amount and nec-
377 essary charges against principal.

In Schedule D the trustee shows a transfer to income for the payments of expenses.

Schedule E is a statement of the corpus of the fund at the close of the accounting period.

I examined the securities at the vaults of the trustee and I report that all of the securities are actually on hand with the exception of $32,000. U. S. Treasury certificates which have been redeemed as reported in the supplemental
378 account. The proceeds were properly credited to principal.

The total inventory value of the corpus is $681,834.54; the market value is $432,126.10. This overall decrease is due entirely to the difference between the inventory value assigned to the Standard Brands common stock. This particular investment was received in exchange for stock of The Fleischman Co. As part of the original corpus the trustee received 4000 shares of Fleischman common stock. Subsequently, as a result of a merger and capital changes, the

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trustee eventually held in place of the Fleichman stock, 4250 shares of Standard Brands Inc. common, of which 300 were sold, leaving the present balance of 3950 shares, the inventory value of which goes back to the values assigned to the Fleischman stock in 1928. The tremendous drop in values that followed the stock market crash of 1929 and continued through the depression explains the difference between the inventory value and the market value of this stock. As a matter of fact the market value 380
of the 4250 shares as of October 19, 1944, as found in the prior judicial accounting is $125,375. There was a sale of 300 shares on December 27, 1950 for $6,506.86. The balance of 3950 shares have a market value at the close of the accounts of $112,081.25. During the period covered by this account, it is evident that there has been little change in value. The big unrealized decrease took place during the prior periods which is a matter embraced in the prior actions, in
which the accounts showing this decrease have 381
been judicially approved. To that extent, the matter is res adjudicata.

It should be noted also that under the terms of the Indenture no sale could be made without the approval of Bruno Reinicke, Jr. while he lived. It was not until the judgment was entered in the prior action on January 20, 1948 that the trustee was free to sell without Reinicke's approval.

An unrealized decrease is shown on Great

382 Northern Railway, Borden Company and Continental Illinois National Bank stock, but in each case I find that the market value of these securities is higher on May 8, 1953 than at the opening of the accounts on October 19, 1944. The apparent decrease goes back to the earlier accounting periods. The Liggett Myers stock having a market value on May 8, 1953 of $15,500. for a market value of $16,350. on October 19, 1944 so that during the current period the de-
383 preciation in value was merely $850. The George M. Forman & Co. stock, inventoried at $1970. and having no market value was also shown to be valueless on the prior accounting.

After examining all the facts and circumstances, it is my opinion that the investments of this trust during the accounting period have been supervised with prudence and care.

Schedule F is a statement of all income collected during the accounting period.

384 Schedule F-1 reports the income from real property.

Schedule G shows payments for administration expenses out of income including income taxes and legal fees all of which are necessary and proper.

Schedule G-1 reports expenses of the real property.

385

Schedule H reports accrued interest items on security purchases.

Schedule I reports investments made out of accumulated income.

Schedule J reports the transfer of $38,626.47 in cash and $78,000. in treasury bonds from the income account to principal. The trustee has properly charged itself with this addition to principal.

386

Schedule K is a correct computation of commissions which will be due on distribution of corpus.

The Supplemental Account

The trustee by its supplemental account has accounted for the period from May 9, 1953 to August 4, 1953.

387

During this period as shown in Schedule BB, $32,000. in Treasury Certificates were redeemed at par. Legal fees were paid to the trustee's attorney, $5,123.35 for services rendered in gift tax proceedings, and $7,500. for services in administration of the trust and the proceedings for the settlement of these accounts. Testimony was taken at the trial on these two items and the Court approved these payments as reasonable. I also find and report that these fees are fair and reasonable.

During the supplemental period the trustee has

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collected income in the amount of $5,088.68 which is reported in Schedule FF and is still on hand.

The present balance of principal is correctly stated to be $669,201.42.

In conclusion, I report that these accounts are correct and I have no objections to the judicial settlement of these accounts as filed.

Dated, New York, April 22, 1954.

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Respectfully submitted,

/s/ Arthur J. O'Leary
Guardian ad Litem for Hans Ulrich Schwarzburger and other infants.

(Verified April 22, 1954.)

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Affidavit of Services of Guardian ad Litem for Infant Defendants 391

[SAME TITLE.]

State of New York,
County of New York—ss.:

ARTHUR J. O'LEARY, being duly sworn, deposes and says:

1. This is an affidavit made to set forth the 392
services rendered by me as guardian ad litem in the above action. On March 1, 1954 I was appointed guardian ad litem of fifteen infant defendants, namely, Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Baur, Christoph Rott, Tilo Koster and Sitta Koster.

I qualified by making an affidavit of responsi- 393
bility and executing a consent to act, both of which I filed in this court.

2. This action was brought by The Chase National Bank to secure the judicial settlement of its accounts as trustee of an inter vivos trust. In this action the Attorney General of the United States sought a judgment directing that all of the assets of the trust be turned over to him pursuant to a Vesting Order issued by him under the Trading with the Enemy Act.

Affidavit of Services of Guardian ad Litem for Infant Defendants

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3. Beginning on November 10, 1953, the date of the service upon me of an order entered October 2, 1953 designating me as the person to receive service of the summons and complaint in behalf of the infant defendants and down to and including the trial of the action on April 9, 1954 and thereafter in connection with the preparation of briefs, I was engaged on more than 30 different dates. The following is a statement taken from my office Register showing the dates
395 on which I was engaged and indicating generally the services rendered on those dates:

1953:

Nov. 10, Personally served with copy of summons and complaint and order designating me to represent the infant defendants in the action. Examined the order and the summons and complaint; also examined the complaint in the action brought by the Attorney Gen-
396 eral against the Trustee plaintiff herein.

19, Prepared Infants' Notice of Appearance; mailed copy to attorney for plaintiff. Filed original with proof of service in New York County Clerk's office.

1954:

Feb. 17, Served with petition and notice of motion for the appointment of guardian ad litem for Hans Dietrich Schaefer,

Affidavit of Services of Guardian ad Litem for Infant Defendants

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an infant defendant, for whom I was designated herein; motion returnable February 25th. Application made by Samuel Anatole Lourie, Esq., as attorney for petitioners Claus Schaefer and Johanne Marie Reinicke Schaefer, parents of Hans Dietrich Schaefer, for the appointment of himself as such guardian ad litem. Endorsed "No Objection" to the entry of the form of order attached to the motion papers. 398

Mar. 1, Served with proposed ex parte order, petition and affidavit for the appointment of guardian ad litem for the infants for whom I was designated (with the exception of Hans Dietrich Schaefer). Endorsed waiver of notice of application for the said order on the original.

2, Served with copy of order dated March 1, 1954 appointing me guardian ad litem to represent fifteen infant defendants. Prepared Consent and Affidavit of Qualification. 399

3, Qualifying Affidavit and Consent filed in New York County Clerk's Office. Prepared Infants' Answer. Mailed copies of Qualifying Affidavit and Consent and copy of Infants' Answer to attorney for plaintiff. Served Infants' Answer upon the attorney for Claus

Affidavit of Services of Guardian ad Litem for Infant Defendants

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Schaefer and Johanne Marie Reinicke Schaefer, and upon the Attorney General. Prepared proof of service.

4, Filed original Infants' Answer with proof of service in New York County Clerk's office.

5, Received and examined order appointing Samuel Anatole Lourie guardian ad litem for Hans Dietrich Schaefer;
401 also received copy of said infant's answer.

23, Served with Note of Issue for April 1954 Special Term.

24, Prepared, served and filed Notice of Motion and Affidavit on application for a preference. Motion returnable April 5th.

25, Engaged on examination of law in preparation for trial.

402

26, Engaged on examination of law in preparation for trial.

29, Engaged on examination of law in preparation for trial.

30, Engaged on examination of law in preparation for trial.

31, Engaged on examination of law in preparation for trial.

Affidavit of Services of Guardian ad Litem for Infant Defendants

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April 5, Appeared in court at Special Term upon the return of the application for a preference. Motion submitted. Received and examined Answering Affidavit interposed by United States Attorney.

6, Prepared, executed and served Replying Affidavit. Filed original.

7, Received and examined affidavit submitted by Samuel Anatole Lourie, 440
guardian and attorney.

7, Decision appeared in New York Law Journal granting application for a preferance and setting the case down for trial on April 9, 1954, at Special Term, Part III.

7, Attended at Supreme Court and obtained copy of order granting application for a preference. Made additional copies of said order and served same 405
by mail upon the attorney for the plaintiff, guardian ad litem for infant defendant Hans Dietrich Schaefer, and upon the United States Attorney. Prepared affidavit of service.

9, Attendance in court upon trial before Mr. Justice Schreiber at Special Term, Part III. Decision reserved. Briefs to be exchanged by April 20th and submitted by April 26th.

Affidavit of Services of Guardian ad Litem for Infant Defendants

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12, Working on Memorandum of Law.

13, Working on Memorandum of Law.

14, Completed preparation of Memorandum of Law on behalf of my wards.

19, Attended at the Chase National Bank in company with the attorney for the plaintiff and the other guardian ad litem. Engaged with Mr. Eastman, representing the trustee, examining the securities in the trust.

407

20, Served Memorandum on behalf of my wards upon the attorney for the plaintiff, also upon the other guardian ad litem and upon the United States Attorney. Mailed additional copy of Memorandum to Irving Jaffe, of the office of the Alien Property Custodian, Washington, D. C.

20, Received and examined Memorandum on behalf of the Attorney General and Memorandum on behalf of the defendants Bruno Carl Reinicke, etc. and on behalf of infant defendant Hans Dietrich Schaefer.

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21, Working on my Report and Reply Memorandum.

22, Working on my Report and Reply Memorandum.

23, Completed my Report and Reply Memorandum. Served Report and Reply

Affidavit of Services of Guardian ad Litem for Infant Defendants

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Memorandum upon attorney for plaintiff, upon other guardian ad litem and upon the United States Attorney. Mailed additional copies of Report and Reply Memorandum to Mr. Jaffee, Washington, D. C. Filed Original Memorandum, Reply Memorandum and Report at Special Term, Part III, with proof of service.

April 26, Received and examined copy of brief on behalf of Attorney General; also on behalf of other guardian. 410

29, Received and examined Report of Samuel Anatole Lourie on behalf of his ward Hans Dietrich Schaefer.

May 18, Wrote to Mr. Justice Schreiber calling attention to newly discovered information In re Young's Estate and Cordero, as admr. v. Brownell. Sent copies of my letter to attorneys who appear in this action. 411

28, Engaged in examination of decision by Mr. Justice Schreiber which appeared in today's New York Law Journal which decision grants the plaintiff-trustee's prayer for relief in the settlement of its accounts and denying the relief requested in the Answer of the Attorney General.

June 4, Received and examined proposed judg-

412 ment. Conferred with the attorney for the plaintiff relative to same.

8, Received and examined judgment and decision with notice of settlement.

4. It was necessary to examine the accounts which covered the period from October 19, 1944 to May 8, 1953 and the supplemental accounts which ran down to August 4, 1953. To show what I did with reference to these accounts I
413 refer to my Report as Guardian ad litem dated April 22, 1954 which is now before this Court. I carefully examined the accounts and each schedule in support thereof and verified the cash balances and examined the securities on hand.

5. I represented the aforesaid infants upon the trial on April 9, 1954 at Special Term, Part III, before Mr. Justice Schreiber. I carefully studied the Federal Statutes and the authorities. I prepared and served and filed a brief and reply
414 brief and I examined the briefs submitted by all of the other parties.

6. The decision is in favor of the position taken by me in behalf of the infants that I represented.

Bearing in mind the time consumed, the amount of the fund, the inventory value of the principal accounted for being $736,041.87 with income items of $160,507.71, a total of approximately $890,000., and taking into account the

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favorable result, it is my opinion that the fair and reasonable value of my services is the sum of $6,000.00 and I respectfully request an allowance in that amount.

ARTHUR J. O'LEARY

(Sworn to June 14, 1954.)

Affidavit of Services of Guardian ad Litem for Defendant Hans Dietrich Schaefer

416

[SAME TITLE.]

State of New York,
County of New York—ss.:

SAMUEL ANATOLE LOURIE, being duly sworn, deposes and says:

417

I am an attorney-at-law duly admitted to practice in the courts of the State of New York, with offices at No. 15 Broad Street, New York 5, N. Y.

This affidavit is made in support of an application to have the Court award me an allowance for services rendered by me as Guardian ad Litem for Hans Dietrich Schaefer, infant defendant in this action.

The Chase National Bank of the City of New York brought this action for the judicial settle-

418 ment of its account as Trustee under the trust indenture made on March 21, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York. By reason of the fact that the Attorney General, as successor to the Alien Property Custodian (hereinafter briefly "Custodian"), in a letter dated April 15, 1953, and received sometime thereafter, directed the plaintiff Trustee to deliver the trust fund to the Custodian, the plain-
419 tiff asked the Court to instruct it as to the disposition to be made of the principal of the trust. It also asked that moneys be retained for taxes and for counsel fees for future litigation in the event that the Court should direct payment to the Custodian of the principal of this trust.

My work in connection with this action began on November 9, 1953, when I first examined the complaint of The Chase National Bank of the City of New York, at the request of Bruno Carl Reinicke and Robert Hans Reinicke, defendants
420 herein. Subsequently thereto, I examined the decisions and opinions of this Court, of the Appellate Division, First Department, and of the Court of Appeals in the prior action and did research on the questions of law involved in this action for the purpose of preparing an answer and formulating the defenses interposed therein. This extensive work, although done prior to my appointment as Guardian ad Litem, inured to the benefit of the infant defendant and reduced the quantity of work performed by me as Guardian

Affidavit of Services of Guardian ad Litem for Defendant Hans Dietrich Schaefer

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ad Litem of the infant defandant after the formal appointment.

On January 18 and 20, 1954, at the instance of and on behalf of the parents of the infant, I prepared the petition for appointment of Guardian ad Litem of Hans Dietrich Schaefer, and on January 21 mailed the same to his parents at Detroit, Michigan, with instructions for execution. Upon receipt of the executed petition from the parents I served upon Thomas A. Ryan, Esq., attorney for plaintiff, and Arthur J. 422
O'Leary, Esq., who was designated to receive the summons on behalf of the said infant, the notice of motion for the appointment of Guardian ad Litem. I was appointed Guardian ad Litem for Hans Dietrich Schaefer by order of this Court dated and entered in the office of the Clerk of the County of New York, on February 26, 1954.

Thereafter from March 1 to March 4, 1954, I worked on the answer on behalf of Hans Dietrich Schaefer, executed the same on March 4, and on March 5 served a copy thereof on Thomas A. 423
Ryan, Esq., attorney for plaintiff, and on J. Edward Lumbard, United States Attorney, Southern District of New York, attorney for the defendant Herbert Brownell, Jr., Attorney General of the United States, and on Arthur J. O'Leary, Esq., Guardian ad Litem for certain infant defendants.

On March 23, 1954, I received copy of note of issue for April 1954 Special Term, served upon me by Thomas A. Ryan, Esq., attorney for plaintiff. On March 25, I received notice of motion

for preferance over older issues and affidavit of Arthur J. O'Leary, Esq.

On March 25, 26, 29, 30 and 31 I examined various provisions of the Trading with the Enemy Act, as amended, decisions rendered thereunder, with particular reference to proclamations relating to termination of state of war with Germany after World Wars I and II and their effect upon the vesting power of the Alien Property Custodian.

On April 5 I examined the affidavit of Milton E. Lacina, Assistant United States Attorney, in opposition to motion for preference and worked on the affidavit in reply thereto. On April 6 I worked further on the reply affidavit and served the same on the attorneys for the respective parties. On April 7, 1954, it appeared in the New York Law Journal that the motion for preference was granted and that the case was set down for April 9, 1954, at Special Term, Part III, and I worked prepafatory to trial on April 7 and 8.

On April 9, 1954, I took part in the trial at Special Term, Part III, before Mr. Justice Schreiber, as Guardian ad Litem of Hans Dietrich Schaefer.

From April 14 to April 20, 1954, I worked on the brief on behalf of Hans Dietrich Schaefer, examined law and authorities in connection therewith, and on April 20, 1954, served the same on the attorneys for the respective parties.

On April 21 and 22, 1954, I studied the briefs

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submitted by the attorneys for the respective parties and examined into the cases cited therein.

From April 24 to April 26 I worked on the reply brief.

On April 26 the reply brief was served and all papers filed.

As to the account, my services included an examination and audit of the schedules in this and prior accountings, examination of the securities at the Bank and a study of the losses shown in Schedules B and E of the account (April 12, 13 and 19, 1954). I prepared a report (April 27 and 28, 1954), served the same on the attorneys for the respective parties on April 29 and April 30, 1954, and filed the same with the Court on April 30, 1954.

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On May 28, 1954, the memorandum decision of Mr. Justice Schreiber appeared in the New York Law Journal. The Court granted the plaintiff trustee's prayer for relief in the settlement of its accounts, and denied the relief requested in the answer of the Attorney General.

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The Court found that Hans Dietrich Schaefer, the infant defendant represented by me, "is a United States citizen and who may well become entitled to the entire principal of this trust upon its termination."

In estimating the reasonable value of my services herein I have considered the nature of the services rendered, the size of the trust involved, the time necessarily spent, my experience in these matters (See e. g., my articles entitled

Affidavit of Services of Guardian ad Litem for Defendant Hans Dietrich Schaefer

430 "The Trading with the Enemy Act" 42 Michigan Law Review 207 (1943) and "'Enemy' under the Trading with the Enemy Act and Some Problems of International Law" 42 Michigan Law Review 383 (1943)) and the result achieved for the infant I represented.

The trust estate has a total inventory value of $669,201.42 and a market value of about half a million.

The services were rendered on 36 days and
431 required 101½ hours. These services do not include the number of hours devoted to the services rendered in connection with this action and described in a separate affidavit of services of Attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, defendants herein. The services described in that separate affidavit—also beneficial to the interest of the ward—were rendered on 23 days and required 64 hours. Consequently, the total number of hours devoted to the services
432 in connection with this action is 165½.

The result achieved, as indicated by the above quotation from the opinion of the Court, is, I respectfully submit, an important factor in the determination of the allowance to be made to me as Guardian ad Litem for Hans Dietrich Schaefer. The relief requested by the Office of Alien Property, if granted, would have in effect amounted to the destruction of the trust, and the decision of the Court preserved the trust.

I am familiar with the reasonable value of

Affidavit of Services of Guardian ad Litem for Defendant Hans Dietrich Schaefer

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services of the nature rendered in this type of action, and it is my opinion that the reasonable value of my services in this action, described in this affidavit and in the separate affidavit referred to above, is not less than $6,000. If the Court deems it appropriate to allocate a part of that sum to the services rendered as Guardian ad Litem and a part to services rendered as attorney for the three above named defendants, contingent remaindermen, I respectfully request the Court to do so. I submit that all the services 434
rendered by me in this action redounded to the benefit of the trust.

WHEREFORE, I respectfully request that the Court allow me the sum of $6,000 as and for my compensation for the services rendered by me in this action.

SAMUEL ANATOLE LOURIE

(Sworn to June 11, 1954.) 435

436 **Affidavit of Services of Attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer**

[SAME TITLE.]

State of New York,
County of New York—ss.:

SAMUEL ANATOLE LOURIE, being duly sworn, deposes and says:

437

I am an attorney-at-law duly admitted to practice in the courts of the State of New York, with offices at No. 15 Broad Street, New York 5, N. Y.

This affidavit is made in support of an application to have the Court award me an allowance for services rendered by me as attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, defendants who have an interest, subject to being di-
438 vested, in and to the trust established under a certain indenture of trust dated March 21, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York. By vesting Order No. 4551, executed January 29, 1945, the Alien Property Custodian purported to vest in himself the right, title, interest and claim of any kind or character whatsoever of said defendants, among other persons.

My work in connection with this action began on November 9, 1953, when I first examined the

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complaint of The Chase National Bank of the City of New York, at the request of Bruno Carl Reinicke and Robert Hans Reinicke. Subsequently thereto, on November 10, 13, 16, 23, 24, December 18, 1953, January 11, 13, 14 and 15, 1954, I examined the decisions and opinions of this Court, of the Appellate Division, First Department, and of the Court of Appeals, in the prior action, and did research on the questions of law for the purpose of preparing an answer, and formulating the defenses interposed therein. During the same period I conferred with Thomas A. Ryan, Esq., attorney for the plaintiff trustee, and corresponded with the said defendants. This extensive work, although done prior to my appointment as Guardian ad Litem of Hans Dietrich Schaefer, is not included in the number of hours devoted to the representation and the protection of the interest of the infant defendant and covered by a separate affidavit of services as Guardian ad Litem for Hans Dietrich Schaefer.

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After verification of the answer prepared by me by the said three defendants in their three separate places of residence, copies of the answer were served, on March 8, 1954, upon Thomas A. Ryan, Esq., attorney for plaintiff, J. Edward Lumbard, United States Attorney, Southern District of New York, attorney for defendant, Herbert Brownell, Jr., Attorney General of the United States, and on Arthur J.

Affidavit of Services of Attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer

442 O'Leary, Esq., Guardian ad Litem of certain infant defendants.

Thereafter I made preparations for trial and on April 9, 1954, took part, on behalf of said three defendants, in the trial at Special Term, Part III, before Mr. Justice Schreiber.

On April 13, 19 and 20 I worked on the brief on behalf of defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Rei-
443 nicke Schaefer, examined law and authorities in connection therewith, particularly with reference to the defense of res judicata and thoroughly studied the record and briefs on appeal in the prior action.

On April 20, 1954, I served the brief on the attorneys for the respective parties.

On April 22 I had a conference with James D. Hill, Esq., and Irving Jaffe, Esq., of the Office of Alien Property, Department of Justice, at Washington, D. C., exploring whether or not
444 there exists a legal possibility for an overall termination of the matter.

On April 26 I served a joint reply brief on behalf of the infant defendant Hans Dietrich Schaefer and the three said defendants.

On May 28, 1954, the memorandum decision of Mr. Justice Schreiber appeared in the New York Law Journal. Thereafter, on June 4, 1954, I examined the draft of the proposed findings of fact and conclusions of law prepared by Thomas A. Ryan, Esq., attorney for plaintiff,

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suggested some amendments and conferred with regard to the same with Thomas A. Ryan, Esq., and Arthur J. O'Leary, Esq.

In estimating the reasonable value of my services herein I have considered the nature of the services rendered, the size of the trust involved, the interest of the defendants, the time necessarily spent, my experience in these matters and the result achieved for the three defendants I represented. I respectfully submit to the Court 446
that I verily believe my work as attorney for the three defendants was of assistance to the Court, and of benefit to the trust. The relief requested by the Office of Alien Property would in effect amount to the destruction of the trust and the decision of the Court prevented such a consequence. The work performed and the services rendered on behalf of the three defendants is not included in the number of hours devoted to the services rendered as Guardian ad Litem of Hans Dietrich Schaefer, the infant 447
defendant, covered in a separate affidavit. However, all of these services were beneficial to the interest of the said infant.

Services were rendered on 23 days and required 64 hours.

I am familiar with the reasonable value of services of the nature rendered in this type of action, and it is my opinion that the reasonable value of the services rendered in this action and described above and in the affidavit of services

Affidavit of Services of Attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer

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as Guardian ad Litem of Hans Dietrich Schaefer, infant defendant, is not less than $6,000. If the Court deems it appropriate to award the compensation for the services rendered by me in this action in one sum, I respectfully request the Court to do so. I submit that all the services rendered by me in this action redounded to the benefit of the trust.

449 WHEREFORE, I respectfully request that the Court allow me a sum of money at its discretion as and for my compensation for the services rendered by me as attorney for said three defendants, Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, contingent remaindermen.

SAMUEL ANATOLE LOURIE

(Sworn to June 11, 1954.)

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Decision

12138—53

[SAME TITLE.]

The issues of law and fact raised by the pleadings in this action having come on to be tried by this Court without a jury at Special Term, Part III, of this Court on the 9th day of April,

1954, and the plaintiff having appeared at the 451
trial by Thomas A. Ryan, Esq., its attorney, and the infant defendants Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolph Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Baur, Christoph Rott, Tilo Koster and Sitta Koster having appeared at the trial by Arthur J. O'Leary, Esq., their guardian ad litem, and the defendant Hans Dietrich Schaefer having appeared at the trial 452
by Anatole Samuel Lourie, Esq., his guardian ad litem, and the defendants Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer having appeared at the trial by Anatole Samuel Lourie, Esq., their attorney, and the defendant, Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian, having appeared at the trial by Irving Jaffe, Esq., of counsel, for J. Edward Lumbard, Esq., United States attorney for the Southern District of 453
New York, and the Court having heard the proofs and allegations of the parties and due deliberation having been had, I, the undersigned, do hereby find and decide as follows:

Findings of Fact

1. Charles L. Cobb, who was then a resident of the State of Illinois, executed and delivered

454 to The Chase National Bank of the City of New York, a certain Indenture of Trust dated the 21st day of March, 1928, a copy of which is annexed to the complaint and marked Exhibit A, and transferred and delivered to the said The Chase National Bank of the City of New York certain property, set forth in Schedule A of said Indenture, in trust, to hold, manage, care for and protect and to collect the income from the said trust estate during the lives of Bruno Reinicke, Jr., and his wife, Elisabeth
455 Reinicke. By the terms of Article 4 of the said Indenture the Trustee was directed to add the net income of the trust to the principal of the trust estate unless Bruno Reinicke, Jr., should direct the Trustee to pay the income to himself or to another person for the support and maintenance of his children. By the terms of Article 6 of the said Indenture the Trustee was directed on the death of the survivor of Bruno Reinicke, Jr., and Elisabeth Reinicke to divide the trust estate and accumulated income
456 into as many equal shares as there should be children of the said Bruno Reinicke, Jr., living at that time and children who had died leaving descendants living at that time and the disposition of such shares to such children or descendants of deceased children was further provided for by the terms of said Article 6, and it was further provided that upon the death of the said Bruno Reinicke, Jr., and Elisabeth Reinicke without issue, the principal and accumulated income of the said trust should be paid

over and delivered to certain named nephews and nieces of Bruno Reinicke and the issue of any such deceased nephew or niece. 457

2. The said The Chase National Bank of the City of New York accepted the trust created by the said Indenture of Trust, consented and agreed to act as Trustee under the said Indenture, received the said property pursuant to the terms of the said Indenture and thereafter continuously administered the said trust and is now administering the same and is now holding the property constituting the principal and accumulated income of the said trust so created by the said Indenture of Trust at its office at 11 Broad Street, New York, New York. 458

3. The Chase National Bank of the City of New York is a national banking association organized and existing under the laws of the United States of America, having its principal office and place of business at No. 18 Pine Street in the Borough of Manhattan, City, County and State of New York. 459

4. By a judgment of this Court dated the 30th day of January, 1943, the account of plaintiff as Trustee as aforesaid for the period from July 12, 1938 to October 19, 1944, was judicially settled and allowed.

5. On January 29, 1945, James E. Markham, Alien Property Custodian of the United States, pursuant to the authority conferred upon him

460 by the Trading with the Enemy Act, as amended (50 U. S. C. App. Secs. 1, *et seq.*) and by Executive Order No. 9095, as amended, issued Vesting Order No. 4551, vesting in himself to be held, used, administered, liquidated, sold or otherwise dealt with in the interest and for the benefit of the United States, the property described as follows:

"All right, title, interest and claim of any kind or character whatsoever of Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno
461 Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, child or children, names unknown, of Bruno Reinicke, Jr., and Elisabeth Reinicke; Klaus Reinicke, Hans Egon Schwarzburger, Ilse Schwarzburger Roth, Hans Adolf Roth, Heide Roth, Hans Eberhardt Schwarzburger, Karla Maria Rott vom Baur, Fritz vom Baur, Gerd vom Baur, Roland Rott, Rose Lore Rott,
462 Fritz Reinicke, Gertrud Ernst, Ella Schwarzburger, Charlotte Rott, descendants of any deceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; issue, names unknown, of Fritz Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of Ella Schwarzburger; issue, names unknown of, Charlotte Rott; heirs at law, names unknown of Bruno Reinicke, Jr.; and each of them, in and to the trust established under a certain inden-

ture of trust dated March 21, 1928 be- 463
tween Charles L. Cobb and The Chase National Bank of the City of New York."

6. By Executive Order No. 9788, effective October 15, 1946 (11 Fed. Reg. 11981), the Office of Alien Property Custodian was terminated and all authority, rights and functions vested in such office and in the Alien Property Custodian were transferred and vested in the Attorney General of the United States.

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7. In an action heretofore brought in this Court by the plaintiff against substantially the same defendants, except the Attorney General of the United States (County Clerk's number 6987—1944) the Attorney General of the United States as successor to the Alien Property Custodian, requested leave to intervene, and leave to intervene was granted to him by this Court; and the Attorney General filed an answer to the complaint and requested the Court to determine that the Trustee be directed, upon the termination of the trust, to deliver to the Attorney General of the United States the shares of the trust comprised of the persons whose interests were acquired by the Attorney General by Vesting Order No. 4551 and that he had succeeded to certain powers over the said trust. It was also requested in said action by the Attorney General as Successor to the Alien Property Custodian that the Court should determine that the entire principal of the said trust should be transferred to the Attorney General as Successor

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466 to the Alien Property Custodian on the ground that all interests in the trust had vested in the Attorney General by said vesting order #4551. The determinations so requested were denied by this Court as appears from the judgment dated the 30th day of January, 1948, hereinafter referred to.

8. A judgment dated January 30, 1948, was entered in the said action, which judgment was affirmed by the Appellate Division of the Su-
467 preme Court and by the Court of Appeals, in which it was adjudged that the account of the plaintiff as such Trustee be judicially settled, and in which it was further adjudged as follows in paragraph 8 to 16 inclusive of the said judgment:

"8. The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase
468 National Bank of the City of New York is authorized in its discretion to exercise the administrative powers conferred upon it by the said Trust Indenture which are subject to the control of the said Bruno Reinicke during the period after this judgment becomes final and until the termination of hostilities with the German Reich and for such other further period as the control of the said Bruno Reinicke Jr. over the said administrative powers is subject to blocking or other Governmental

control either of this country or of any government in Germany. 469

"9. Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive the income of the said trust which had been accumulated as of the date of the making of the Vesting Order by the Alien Property Custodian #4551 to wit on January 29, 1945.

"10. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian is not entitled to receive any part of the accumulated income of said trust held by the said Trustee which has been collected of the said Trustee since the date of the said Vesting Order #4551. 470

"11. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive any income which may be collected hereafter during the lifetime of Bruno Reinicke, Jr., the settlor in the said trust. 471

"12. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian has not succeeded to the powers with respect to the management and disposition of the trust lodged in the said settlor, Bruno Reinicke, Jr. and his wife, Elisabeth Reinicke.

472 "13. It was the intention of the Settlor that all of the income from said trust and the accumulated income thereof which should not be used for the children of said Bruno Reinicke, Jr. should be accumulated for the benefit of those ultimately entitled to take the corpus of the trust upon its termination.

"14. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States has
473 no power to change the terms of the said trust indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, and to confer upon himself property rights superior to those of his predecessors in interest.

"15. The power retained by the said Bruno Reinicke, Jr. to direct the payment of income is a personal power and the
474 Alien Property Custodian did not succeed to such power by reason of said Vesting Order #4551.

"16. The powers over the management of the trust fund retained by Bruno Reinicke, Jr. are also personal powers and the Alien Property Custodian did not succeed to said powers by the said Vesting Order."

9. By a further order dated April 6, 1953, the Attorney General of the United States as

successor to the Alien Property Custodian purported to amend the said vesting order numbered 4551, referred to in paragraph 5 of this decision. A copy of said order is annexed to the complaint herein and marked Exhibit B. 475

10. The Attorney General of the United States as successor to the Alien Property Custodian, has heretofore submitted to the jurisdiction of this Court in the matter of said trust in the action referred to in paragraph 7 of this decision, and a judgment has been made determining that the powers claimed by the Attorney General of the United States as successor to the Alien Property Custodian, over this trust are not vested in him and may not be exercised by the Attorney General. 476

11. At the time of the making of said order dated April 6, 1953, by the Attorney General, there was in being an American citizen, the defendant Hans Dietrich Schaefer, a grandson of Bruno Reinicke, who was born on the 15th day of August, 1953, at Detroit in the State of Michigan, who has a contingent interest in the said trust fund and the accumulated income thereof, and said infant may become entitled to the entire principal of the said trust fund and the accumulated income thereof upon the termination of the said trust. 477

12. The Attorney General of the United States has requested the plaintiff as Trustee as aforesaid to account and to send copies of all

papers in this action to the Office of the Attorney General as appears from the letter from the Office of the Attorney General dated April 15, 1953; directed to the plaintiff, and received by the plaintiff sometime thereafter, a copy of which is annexed to the complaint, and marked Exhibit C.

13. The said trust fund and accumulated income thereof is held by The Chase National Bank of the City of New York as Trustee under the said Indenture of Trust dated March 21, 1928, and is not properly payable or deliverable to or claimed by or held for or owned by any person, but is to be held, administered and disposed of by the Trustee as provided in the said Indenture of Trust for future distribution not to take effect earlier than after the death of the survivor of Bruno Reinicke and his wife the defendant Elisabeth Reinicke and all income is to be accumulated and added to the principal as provided in the said Indenture of Trust and authorized by the law of Illinois.

14. That the trust created under the terms of the aforesaid Indenture of Trust dated the 21st day of March, 1928, is a continuing trust and has not terminated; that the remainder interests created under Article 6 of the said Trust Indenture are contingent in their nature; there are outstanding beneficial interests under said trust which have not yet validly vested; the ultimate remaindermen are not ascertainable and cannot be identified at this time.

15. Objections were filed by the Attorney General as Successor to the Alien Property Custodian to an item of $250 paid by The Chase National Bank of the City of New York to itself shown in Schedule C of the account and to attorney's fees as shown in Schedule CC of the supplemental account, the said objections being tentative and asking that the Court pass upon these items. The Court passed upon these items and the said tentative objections were overruled at the trial, the counsel for the Attorney General not objecting. 481 482

16. The defendant Herbert Brownell, Jr., as Successor to the Alien Property Custodian is not entitled to the possession of the property comprising the corpus of the trust created by the said Indenture of Trust dated March 21, 1928, or to the income, and accumulations of income, in possession or under the control of the plaintiff as Trustee under said Indenture of Trust dated March 21, 1928. 483

17. The plaintiff as Trustee under said Indenture of Trust dated March 21, 1928, is entitled to continue to hold, administer and dispose of the corpus of said trust under the said Indenture and the income and accumulations thereof as provided in the said Indenture of Trust dated March 21, 1928.

18. The Attorney General appeared generally in the above-entitled action and demanded in his answer to the complaint herein that it be ad-

484 judged and decreed that the Attorney General as Successor to the Alien Property Custodian as aforesaid is entitled to immediate possession of the property comprising the net corpus of the trust created by said Indenture of Trust dated March 21, 1928, with all income and accumulations and increments thereon in the possession or under the control of the plaintiff herein.

CONCLUSIONS OF LAW

485 1. The plaintiff is entitled to judgment as hereinafter provided.

2. The relief requested in the answer of Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian is hereby denied.

3. The plaintiff, The Chase National Bank of the City of New York, as Trustee under the Indenture dated the 21st day of March, 1928, be-
486 tween Charles L. Cobb and The Chase National Bank of the City of New York, is entitled to judgment to have its account judicially settled.

4. The plaintiff, The Chase National Bank of the City of New York, has duly accounted for all and singular its acts and proceedings as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York and for all of the property which came or should have come into its hands as such Trustee.

Decision

5. The account of the proceedings of The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, should be judicially settled in all respects, and the acts and transactions and retention of investments of said Trustee therein set forth are in full respects approved. 487

6. The plaintiff, The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York should be charged and credited as follows: 488

SUMMARY STATEMENT

(October 19, 1944 to May 8, 1953)

AS TO PRINCIPAL

Charges

Amount of all property on hand October 19, 1944, date of our last account as set forth in Schedule A	$617,470.65	489
Amount of all additional property received as set forth in Schedule A-1	116,576.75	
Amount of all increases on the sale or disposition of property as set forth in Schedule B	1,994.47	$736,041.87

Decision

490 *Credits*

Amount of all decreases on the sale or disposition of property as set forth in Schedule B	$ 35,100.45	
Amount of all payments made for administration expenses as set forth in Schedule C	13,795.64	
491 Amount of all funds transferred to income as set forth in Schedule D	5,311.24	$ 54,207.33
Leaving a balance of consisting of property, as set forth in Schedule E		$681,834.54

As to Income

Charges

492 Amount of all income on hand October 19, 1944, date of our last account	$ 21,478.58	
Amount of funds transferred from principal	5,311.24	
Amount of all income collected as set forth in Schedule F (Personal Property)	131,074.12	
Amount of all income collected as set forth in Schedule F-1 (Real Property)	3,034.15	$160,898.09

Decision

Credits			493
Amount of losses upon sale of assets constituting invested income as set forth in Schedule I	$ 20.52		
Amount of all payments made for administration expenses as set forth in Schedule G (Personal Property)	42,346.79		
Amount of all payments made for administration expenses as set forth in Schedule G-1 (Real Property)	1,501.29		494
Amount of all funds transferred to principal as set forth in Schedule J	116,576.75		
Amount of accrued interest on purchase of securities to be subsequently refunded upon next interest date as set forth in Schedule H	62.36	$160,507.71	495
Leaving an income cash balance of		$ 390.38	

The foregoing principal balance of $681,834.54 consists of cash in the sum of $2,202.37 and other property on hand on May 8, 1953 having an inventory value of $679,632.17.

The said principal balance represents the inventory value of the cash and securities on hand

in the principal account on May 8, 1953 and does not represent the market or actual value of the property held by the Trustee or a sum of money or its equivalent for which the Trustee is chargeable and is subject to Trustee's commissions, legal fees and expenses of this accounting.

The foregoing income balance of $390.38 consists entirely of cash and is subject to Trustee's commissions and expenses of this accounting.

SUMMARY STATEMENT

(May 9, 1953 to August 4, 1953)

AS TO PRINCIPAL

Balance as shown in main account Schedule E		$681,834.54
Amount of all decreases as set forth in Schedule BB	$ 9.77	
Amount of all payments made for administration expenses as set forth in Schedule CC	12,623.35	12,633.12
		$669,201.42

AS TO INCOME

Balance as shown in main account		$ 390.38
Amount of income collected as set forth in Schedule FF	$ 5,088.68	5,088.68
		$ 5,479.06

The foregoing principal balance of $669,201.42 consists of cash in the sum of $21,579.02 and other property on hand on August 4, 1953 having an inventory value of $647,622.40, being the same securities set forth in Schedule E of the main account except $32,000.00 United States of America Treasury Certificate of Indebtedness Series "B" which has since matured. 499

7. The Chase National Bank of the City of New York should be directed to make the following payments out of the principal or accumulated income of the said trust: 500

To Arthur J. O'Leary, Esq., the sum of Thirty five hundred Dollars ($3500.00/100) which is allowed to him for services as guardian ad litem herein.

To Samuel Anatole Lourie, Esq., the sum of Thirty five hundred Dollars ($3500.00/100) which is allowed to him for his services as guardian ad litem herein.

To Samuel Anatole Lourie, Esq., the sum of Seven hundred and fifty Dollars ($750.00/100) as attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer. 501

8. The plaintiff is entitled to its costs and disbursements to be taxed by the County Clerk and paid out of the principal or accumulated income of said trust.

9. The Chase National Bank of the City of New York should be released, relieved and for-

ever discharged of and from any and all liability or accountability as to all matters and things set forth in the said account and supplemental account or embraced in the judgment to be entered herein or in any way related to the said trust or the administration thereof except as to its liability to account for the balance of income and principal remaining in its hands as such Trustee as shown by the said account and supplemental account.

10. The plaintiff is directed to retain the principal and accumulated income of the trust under the said Indenture dated March 21, 1928, as provided therein, and the judgment to be entered herein shall provide that no payment of income, of principal or of accumulated income of the said trust shall be made to any beneficiary without 60 days' written notice to the Attorney General of the United States to be given by registered mail.

I direct that judgment be entered accordingly.

Dated: New York, N. Y.
June 15th, 1954

BENJAMIN F. SCHREIBER
Justice of the Supreme Court
of the State of New York

Entered: June 22, 1954

Judgment

505

At a Special Term Part III, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Courthouse in said County on the 15th day of June 1954.

Present—Honorable Benjamin F. Schreiber,
Justice.

County Clerk's No. 12138–1953

506

[SAME TITLE.]

The summons and complaint herein having been duly served upon the defendants herein and Arthur J. O'Leary, Esq. having been duly appointed guardian-ad-litem for the infant defendants Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Baur, Christoph Rott, Tilo Koster and Sitta Koster, and Anatole Samuel Lourie, Esq. having been duly appointed guardian-ad-litem for the infant defendant, Hans Dietrich Schaefer, and the said guardians-ad-litem having duly qualified as required by law and the said Arthur J. O'Leary as guardian-ad-litem for his said wards having answered the complaint herein, and Anatole Samuel Lourie, Esq. as guardian-ad-litem for his said ward having answered the

507

508 complaint herein, and Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian having appeared generally by J. Edward Lumbard, Esq., United States Attorney, and an answer having been filed in behalf of the said Attorney General in which he demanded that it be adjudged and decreed that Herbert Brownell, Jr. Attorney General of the United States as Successor to the Alien Property Custodian is entitled to the immediate possession of the property comprising
509 the net corpus of the trust created by said indenture of trust dated March 21, 1928, by and between Charles L. Cobb and The Chase National Bank of the City of New York as trustee, with all income, accumulated income and increments thereon in the possession of or under the control of the plaintiff herein, and the said Anatole Samuel Lourie, Esq. having appeared herein on behalf of the defendants, Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, and having answered the com-
510 plaint herein, and none of the other defendants having appeared or answered the complaint or made a motion addressed to the sufficiency of the complaint herein and the said guardian-ad-litem having filed their respective reports; and after hearing the proofs and allegations of the parties and the decision in writing of the Court having been filed, and the account and supplemental account of the plaintiff as Trustee under the said indenture dated March 21, 1928 between Charles L. Cobb and The Chase National

Bank of the City of New York having been filed and the objections of the defendant Herbert Brownell, Jr. Attorney General of the United States as Successor to the Alien Property Custodian having been overruled without objection thereto by counsel for the Attorney General and the Military Service Affidavit having been filed and notice of pendency of the action under Rule XIX of the Special Term Rules having been filed, NOW, on motion of Thomas A. Ryan, Esq., attorney for the plaintiff, it is 511

512

ORDERED, ADJUDGED AND DECREED, as follows:

1. The plaintiff is entitled to judgment as hereinafter provided.

2. The relief requested in the answer of Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian, is hereby denied.

3. The plaintiff, The Chase National Bank of the City of New York, as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, is entitled to judgment to have its account judicially settled. 513

4. The plaintiff, The Chase National Bank of the City of New York, has duly accounted for all and singular its acts and proceedings as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and

514 The Chase National Bank of the City of New York and for all of the property which came or should have come into its hands as such Trustee.

5. The account of the proceedings of The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, be and it hereby is judicially settled in all respects, and the acts and transactions and re-
515 tention of investments of said Trustee therein set forth are in all respects approved.

6. The plaintiff, The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, is charged and credited as follows:

SUMMARY STATEMENT

516 (October 19, 1944 to May 8, 1953)

AS TO PRINCIPAL

Charges

Amount of all property on hand October 19, 1944, date of our last account as set forth in Schedule A	$617,470.65
Amount of all additional property received as set forth in Schedule A-1	116,576.75

Judgment

Amount of all increases on the sale or disposition of property as set forth in Schedule B	$ 1,994.47	$736,041.87	517

Credits

Amount of all decreases on the sale or disposition of property as set forth in Schedule B	35,100.45		
Amount of all payments made for administration expenses as set forth in Schedule C	13,795.64		518
Amount of all funds transferred to income as set forth in Schedule D	5,311.24	54,207.33	
Leaving a balance of consisting of property, as set forth in Schedule E		$681,834.54	519

As to Income

Charges

Amount of all income on hand October 19, 1944 date of our last account	21,478.58
Amount of funds transferred from principal	5,311.24

Judgment

520	Amount of all income collected as set forth in Schedule F (Personal Property)	$131,074.12	
	Amount of all income as set forth in Schedule F-1 (real property)	3,034.15	$160,898.09
	Credits		
521	Amount of losses upon sale of assets constituting invested income as set forth in Schedule I	$ 20.52	
	Amount of all payments made for administration expenses as set forth in Schedule G (personal property)	42,346.79	
	Amount of all payments made for administration expenses as set forth in Schedule G-1 (real property)	1,501.29	
522	Amount of all funds transferred to principal as set forth in Schedule J	116,576.75	
	Amount of accrued interest on purchase of securities to be subsequently refunded upon next interest date as set forth in Schedule H	62.36	160,507.71
	Leaving an income cash balance of		$ 390.38

The foregoing principal balance of $681,834.54 consists of cash in the sum of $2,202.37 and other property on hand on May 8, 1953 having an inventory value of $679,632.17. 523

The said principal balance represents the inventory value of the cash and securities on hand in the principal account on May 8, 1953 and does not represent the market or actual value of the property held by the trustee or a sum of money or its equivalent for which the trustee is chargeable and is subject to trustee's commissions, legal fees and expenses of this accounting. 524

The foregoing income balance of $390.38 consists entirely of cash and is subject to trustee's commissions and expenses of this accounting.

SUMMARY STATEMENT

(From May 9, 1953 to August 4, 1953)

AS TO PRINCIPAL

Balance as shown in main account Schedule E		$681,834.54	525
Amount of all decreases as set forth in Schedule BB	$ 9.77		
Amount of all payments made for administration expenses as set forth in Schedule CC	12,623.35	12,633.12	
		$669,201.42	

526 As to Income

Balance as shown in main account		$ 390.38
Amount of income collected as set forth in Schedule FF	$ 5,088.68	5,088.68
		$ 5,479.06

527 The foregoing principal balance of $669,201.42 consists of cash in the sum of $21,579.02 and other property on hand on August 4, 1953 having an inventory value of $647,622.40, being the same securities set forth in Schedule E of the main account except $32,000.00 United States of America Treasury Certificate of Indebtedness Series "B" which has since matured.

7. The Chase National Bank of the City of New York is hereby directed to make the following payments out of the principal and accumulated income of the said trust:

528 To Arthur J. O'Leary, Esq. the sum of Thirty five ..... hundred dollars ($3500.00/100) which is allowed to him for services as guardian-ad-litem herein.

To Samuel Anatole Lourie, Esq. the sum of Thirty five ..... hundred dollars ($3500.-00/100) which is allowed to him for services as guardian-ad-litem herein.

To Samuel Anatole Lourie, Esq. the sum of Seven hundred and fifty dollars ($750.00/100) which is allowed to him for services as attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Marie Reinicke Schaefer.

To Thomas A. Ryan, Esq. The costs and disbursements of the plaintiff herein as taxed by the County Clerk who is hereby authorized to insert the amount thereof in this judgment, to wit, Dollars (422.10) 529

8. The Chase National Bank of the City of New York is hereby released, relieved and forever discharged of and from any and all liability or accountability as to all matters and things set forth in the said account and supplemental account or embraced in the judgment to be entered herein or in any way related to the said trust or the administration thereof except as to its liability to account for the balance of income and principal remaining in its hands as such Trustee as shown by the said account and supplemental account. 530

9. The plaintiff is directed to retain the principal and accumulated income of the trust under the said Indenture dated March 21, 1928, as provided therein, and no payment of income, of principal or of accumulated income of the said trust shall be made to any beneficiary without 60 days' written notice to the Attorney General of the United States to be given by registered mail. 531

Enter

B. F. S.
J. S. C.

Entered: June 22, 1954

ARCHIBALD R. WATSON
Clerk

Stenographer's Minutes

532

SUPREME COURT

NEW YORK COUNTY

SPECIAL TERM—PART III

County Clerk's No. 12138/1953

[SAME TITLE.]

New York, April 9th, 1954.

533

Before—HON. BENJAMIN F. SCHREIBER, Justice.

APPEARANCES:

For the Plaintiff:

THOMAS A. RYAN, Esq., 37 Wall Street, New York City. By Thomas A. Ryan, Esq., and Vincent J. Dunn, Esq., of Counsel.

For the Defendants:

534

SAMUEL ANATOLE LOURIE, Esq., 15 Broad Street, New York City, Attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer.

ARTHUR J. O'LEARY, Esq., 70 Pine Street, New York City, Guardian ad Litem for Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolph Roth, Heide Roth, Christel

Appearances

Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Baur, Christoph Rott, Tilo Koster, Sitta Koster. 535

HON. HERBERT BROWNELL, JR., United States Court House, Foley Square, New York City, Attorney General of the United States. By Irving Jaffe, Esq., of Counsel.

536

Mr. Jaffe: I must make known to the Court that this Court has no jurisdiction over anything which has to do with the scope or the effect of the vesting order.

The Court: Let us go on with the case.

Mr. Ryan: I will make no opening statement.

The Court: What is this—an intermediate account?

Mr. Ryan: Yes, sir. It was made necessary by reason of the fact that the Alien Property office made this amendment to the old vesting order which your Honor passed upon in 1948, and they demanded the account, and that is why we are here. 537

The Court: They demanded that you account?

Mr. Ryan: Yes, and they demanded we turn over the fund to them. We have asked this Court to determine what we should do with the fund.

Among other things we ask that $5,000. be withheld for taxes, and that if this Court should determine that the fund should be paid over

538 to the Alien Property Office, that the sum of $25,000. be retained for distribution to enable the Trustee to question this determination and make a claim under the Trading with the Enemy Act, in order to protect the trust fund. That is all.

The Court: All right, that is the situation as far as you are concerned. Now, the Guardian.

Mr. O'Leary: I represent all the infants except one, and I will wait to hear the proof.

Mr. Jaffe: The objections that have been filed
539 to the account, if I may say so, are minor and general. There is no necessity for a long dissertation on any particular item of the account.

The objections occupy approximately one page, and they are mostly addressed to the fees of counsel, and all we ask is that this Court pass upon their reasonableness.

The reason for that is this: Whenever we have seized a res and corpus we have always been reluctant to interfere with the fees of counsel or to interfere with the normal administra-
540 tion expenses.

There is no doubt that we could go out and seize any property. If we had seized this trust corpus and withdrew it, counsel could not be paid from it because they have no right to be paid from property of the United States. They would have been relegated to come to us, for us to determine reasonable fees.

The Court: They have been paid?

Mr. Jaffe: They have been paid; they have taken some fees.

The Court: And you want me to pass upon 541
the reasonableness of it?

Mr. Jaffe: That is right.

One other question—taxes. I want to call to your Honor's attention that the Trading with the Enemy Act provides that we shall pay the tax and he has no responsibility to pay the tax.

The Court: What do you say to that?

Mr. Ryan: I think they have already made their Income Tax return and have paid the taxes.

Mr. Jaffe: If they paid it, they paid it, but 542
he is asking for a reserve of $5,000. for future taxes. Section 36 says we shall do that, and we are. He is relieved by Section 5B. He has no obligation to anyone, since April 6th.

The Court: Is that set up in your papers?

Mr. Jaffe: I have no papers.

The Court: Go on with the accounting.

Mr. Ryan: I will. I have my pro forma proof.

I offer in evidence the Trust Agreement, 543
dated the 21st day of March, 1928, made by Charles L. Cobb with the Chase National Bank; and I request that this photostatic copy, which I produce, be received in evidence in lieu of the original.

Mr. Jaffe: I have no objection.

(Received in evidence and marked Plaintiff's Exhibit 1.)

Mr. Ryan: I also offer in evidence the agreement dated the 23rd day of May, 1940, between

544 Bruno Reinicke, Cobb and others, and I request that this photostatic copy, which I have produced, be received in evidence in lieu of the original.

Mr. Jaffe: I have no objection to this providing it only helps in the account, but not for any construction purposes.

The Court: I do not know for what purpose it is being offered outside of the accounting. Is there any other purpose?

Mr. Ryan: This paper, no; but the Trust
545 Agreement, I believe, is before the Court for all purposes, because this Court has jurisdiction to determine every question before it, and the Alien Property Office has filed an Answer, by which they submit to the jurisdiction of this Court and ask this Court to direct the fund to be paid over to them; so I cannot appreciate at all the suggestion made by counsel for the Office of Alien Property that this Court has no jurisdiction to pass upon the whole question here.

546 Mr. Jaffe: I object to this insofar as it has any relationship to anything but a foundation for the accounting, and I object to the Court going into anything except the account, and then only until April 6th 1953, because that is when we want to get the money. We will sue them after they have an accounting after that. That is the very thing we reserve in our vesting.

This Court, as we state in our Answer, has no jurisdiction, and I wish to have the record

clear that we do that only on the question of 547
preserving our rights.

We started a Federal Court action, which is given sole jurisdiction over that, and *Kahn* v. *Gardner,* in 263 Fed. indicates there is no jurisdiction in a State Court to handle anything concerning the res or vesting of property.

However, to the extent that the Attorney General has interposed an Answer and to the extent that it has authority and to the extent that I am not raising the point, or have not yet—up to the point of the accounting I am submitting, 548
to the extent I have the authority to, to this Court's jurisdiction. As to the construction of the vesting order and anything other than laying of a foundation for the account we challenge the jurisdiction of the State Court.

The Court: Well, I will take the proof. If that is in the form of an objection, it is overruled.

Mr. Jaffe: Yes, that was the basis of the objection.

The Court: Overruled. 549

(Received in evidence and marked Plaintiff's Exhibit 2.)

Mr. Ryan: I offer in evidence the Judgment Roll in an action in this Court where judgment was entered on January 27th 1948, and I request that the Judgment Roll in that case be deemed to be marked in evidence.

The Court: Do you object?

550 Mr. Jaffe: I object, your Honor, as wholly irrelevant and it involves an entirely different subject matter.

The Court: I will take it for whatever connection it may have. The objection is overruled. It may be deemed marked.

(Received in evidence and deemed marked Plaintiff's Exhibit 3.)

Mr. Ryan: I will also offer in evidence the
551 Order on Remittitur or Judgment on Remittitur entered in this Court on the Remittitur from the Appellate Division in the same case, and I request that it be deemed marked in evidence.

The Court: And you object?

Mr. Jaffe: I object on the same grounds.

The Court: Objection overruled.

(Received in evidence and deemed marked Plaintiff's Exhibit 4.)

Mr. Ryan: I offer in evidence the Judgment
552 entered in this Court on Remittitur from the Court of Appeals in the same case and ask that it be deemed marked in evidence.

Mr. Jaffe: Same objection.

The Court: Same ruling.

(Received in evidence and deemed marked Plaintiff's Exhibit 5.)

Mr. Ryan: I offer in evidence the Judgment entered in this Court on February 17th 1939, in the action brought by the Chase National Bank

against Bruno Reinicke, under File No. 14370/1937. It was only a Judgment to settle an account. 553

The Court: I will take it for what it is worth.

Mr. Jaffe: May I ask a question with respect to that? Is that offered from the starting point of this accounting?

Mr. Ryan: No; it is offered to show the history of the account.

Mr. Jaffe: I object except it forms the groundwork for this account.

The Court: Overruled. 554

(Received in evidence and deemed marked Plaintiff's Exhibit 6.)

Mr. Ryan: I offer in evidence certified copy of the vesting order, dated January 29th 1945, and request that this photostatic copy which I produce be received in lieu of the original.

The Court: That is dated 1945?

Mr. Ryan: Yes, sir. That is the old one. That was amended. 555

(Received in evidence and marked Plaintiff's Exhibit 7.)

Mr. Ryan: I offer in evidence paper entitled "Amendment of Vesting Order 4551, dated April 6th 1953," and I request that this photostatic copy be received in evidence in lieu of the original.

(Received in evidence and marked Plaintiff's Exhibit 9.)

556 Mr. Ryan: I offer in evidence a transcript of the birth certificate of the defendant Hans Dietrich Schaefer. That is one of the defendants, who was born last year.

Mr. Jaffe: I object to that, your Honor. The infant cannot possibly have any interest in this subject matter.

The Court: What is the interest of the infant?

Mr. Ryan: He is a contingent remainderman under this trust. He has been made a party defendant and is represented by Mr. Lourie, and
557 he was born last year.

The Court: And you represent him as Guardian?

Mr. Lourie: Yes, sir.

The Court: All right; I will allow it.

Mr. Jaffe: I have my objection?

The Court: Yes.

(Received in evidence and marked Plaintiff's Exhibit 10.)

558 Mr. Ryan: Will you take the stand, Mr. Eastman?

PHILIP Y. EASTMAN, witness called on behalf of the Plaintiff, being first duly sworn, and stating his home address to be Wells Road, Greenlawn, New York, testified as follows: 559

Direct examination by Mr. Ryan:

Q. What is your profession, Mr. Eastman? A. Personal Trust Officer in the Chase National Bank.

Q. And how long have you been a Personal Trust Officer? A. Seven years.

Q. Are you presently and have you been for many years past in charge of the administration of the trust created by Bruno Reinicke, which is before the Court? A. Yes. 560

Q. And are you familiar with the transactions affecting this trust? A. Yes.

Q. I show you a paper and ask you to describe it if you can? A. This is an account of the proceedings of the bank as Trustee of the Bruno Reinicke trust, under an agreement dated March 21st 1928.

Q. What period does it cover? A. Covering the period from October, 1944, to May 8th 1953. 561

Q. Does that paper contain a full and correct statement of all assets on hand at the beginning of the accounting period to the end? A. It does.

Q. And does it also contain a list of all transactions of the Trustee with respect to this trust? A. Yes, it does.

Mr. Ryan: I offer in evidence the account of the Chase National Bank as

562 Trustee of the said trust created by Bruno Reinicke, for the period from October 19th 1944 to and including May 8th 1953.

Mr. Jaffe: Subject to objections which we may develop with respect to it.

The Court: All right; mark it.

(Received in evidence and marked Plaintiff's Exhibit 11.)

Q. I show you another paper, Mr. Eastman,
563 and ask you to describe it? A. This is a supplemental account of the proceedings of the Chase Bank as Trustee under the agreement with Bruno Reinicke, dated March 28th 1928, covering the period from May 9th 1953 to August 4th 1953. That is supplemental to the account which we just looked at.

Q. Does that contain a complete and true statement of all transactions during the period covered by it? A. Yes.

Q. And of all property on hand at the end
564 of that accounting period? A. I believe only as a summary; not in detail as to the property on hand.

Q. It refers back to the other accounting? A. It refers back to the other account.

Mr. Ryan: I offer in evidence the supplemental Account of the Chase National Bank, as Trustee of the said trust, from the period May 9th 1953 to August 4th 1953.

Mr. Jaffe: Subject to the same reservation? 565

The Court: Yes.

(Received in evidence and marked Plaintiff's Exhibit 12.)

Q. Now, Mr. Eastman, the Office of Alien Property has objected to a payment of $250. shown in Schedule C of the account. A. I believe that is in Schedule C of that account.

Q. Will you please state what that payment 566
was for? A. That was a payment in reimbursement to the Chase Bank for the preparation of the accounting schedules prior to their being typed up.

Q. Do you know how many hours were put in that by the men who worked on it? A. 62½ hours—65½, I am sorry.

Q. Will you state the average rate per hour of the men who worked on that? A. About $4.50 an hour.

Q. Then please state whether in your opinion 567
that sum of $250. is a reasonable charge for those services? A. I think it is quite reasonable.

Q. In the ordinary course of administration would the Bank have had an accounting at this time? A. No, it would not have. The reason for this account is the vesting of the property by the Office of Alien Property.

Q. Then do you consider this an extraordinary thing? A. Yes.

568 Mr. Ryan: In that connection, your Honor, I would like to point out on page 21 of the original trust agreement there is a provision which authorizes, in the case of any litigation or extraordinary situation, the Trustee may employ clerks and so forth.

The Court: Is that objected to?

Mr. Jaffe: It is objected to in the sense——

The Court: Pro forma?

569 Mr. Jaffe: Yes.

The Court: Objection overruled.

Mr. Ryan: I want to direct attention to two other items in the Supplemental Account—attorneys' fees. An objection has been filed to these attorneys' fees. I think it is a pro forma objection also, because the Court is asked to pass upon the reasonableness of the fees.

The Court: What is the amount?

570 Mr. Ryan: There are two amounts. One is $5,000. for a litigation that lasted several years in the Tax Court with respect to a deficiency that was asserted by the Government against the Chase Bank on a transferee liability theory arising out of the settlement of the action in 1937. There was a compromise and the deficiency of $28,000. was first asserted and then when the War ended we succeeded in having it reduced to $23,000., and then I tried the case and the Court

held that there was no gift tax liability 571
arising out of the compromise we made with Mr. Reinicke in that suit.

The Court: Well, as a result of that how much was saved to the estate?

Mr. Ryan: The amount saved to the estate was $23,000. plus interest to a point in 1949.

The Court: And over what period of time were these services rendered?

Mr. Ryan: Your Honor, the services were rendered from the middle of 1948 572
up to the middle of 1952.

The Court: All right. Does the Attorney General intend to examine Mr. Ryan as to the statements he is making?

Mr. Jaffe: No.

The Court: Does anybody intend to do anything about these items?

Mr. Jaffe: Yes, if I may say. I do not care to examine Mr. Ryan on the services that he rendered. What I merely would like to do is to point out to the 573
Court the amount of fees he has received within the past few years from the estate, and ask you to consider that in connection with these fees.

The Court: So that disposes of that item of $5,000. Now, let us get to the next one.

Mr. Ryan: The other one, in which the Court is asked to pass upon the reasonableness, is a fee of $7,500. for services

574 rendered over a period of several years in connection with questions that arose in the administration of the trust and the preparation of this account, the bringing of this action, or up to the entry of Judgment in this action.

The Court: When you say up to the entry of Judgment——

Mr. Ryan: Well, including the entry of Judgment.

The Court: Judgment which might be
575 entered after an appeal?

Mr. Ryan: No.

The Court: Let us have it clear.

Mr. Ryan: The entry of Judgment in this action provided there is no contest and the period during which these services have been rendered goes right down to today and until I should enter the Judgment in this action.

The Court: Beginning when?

Mr. Ryan: It begins the latter part of
576 1949.

The Court: To date?

Mr. Ryan: To date.

The Court: What is the corpus of the estate?

Mr. Ryan: The amount accounted for, principal and income, according to the account, is a little bit in excess of $896,000.

The Court: All right. Now, what other fees did you get in the past?

Mr. Ryan: Well, in the past I was paid 577
for services rendered in the Court of Appeals in sustaining that Judgment in 1948, and for services in the Appellate Division in the case that was decided by you. They have nothing to do with these services at all.

The Court: Were there any other fees paid to you besides those or were there any other legal fees paid by the estate?

Mr. Ryan: There were legal fees paid 578
in connection with the 1937 action too. There were substantial fees there, naturally.

The Court: Well, let us limit it to the fees you received. You say you had a fee in connection with the appeals?

Mr. Ryan: Yes, sir.

The Court: How much was that.

Mr. Ryan: I think it was $2500.

The Court: Now, what other fees were paid for legal services outside of these 579
items, the $5000., $2500. and $2500.?

Mr. Ryan: Excuse me; my fee was $5000. in the other proceedings.

The Court: In the what?

Mr. Ryan: In the 1948 action.

The Court: That was a matter before me and before the Appellate Division and the Court of Appeals?

Mr. Ryan: Yes, sir.

The Court: Now I ask as to what other fees, legal fees, were paid by this estate?

580 Mr. Ryan: None shown in this account.

The Court: That has all been passed upon previously?

Mr. Ryan: Yes, sir, all passed upon, and these were all made by Court order, the fees in this account; they were paid for services rendered in the Court of Appeals and in the Appellate Division, pursuant to Court order.

The Court: And these were all fixed by Court order?

581 Mr. Ryan: That is right.

The Court: Then there is nothing else to do.

Mr. Jaffe: The fees that were fixed before were paid by Court order. Our objection is not addressed to that. Our request to pass upon the reasonableness is to pass upon these two fees totalling $7500.

The Court: I happen to be familiar with the work that went into the appeal

582 and am familiar with the account, so $5000. I would hold is reasonable. As to the $7500., on the basis of the amount of time spent from 1949 through to today, is it?

Mr. Ryan: Right up until the entry of Judgment.

The Court: Up until the entry of Judgment, considering the corpus of the estate, the amount of time taken, and one look at the account itself, I feel is a reasonable

fee unless you have some proof to the contrary. 583

Mr. Jaffe: No; I merely want to call it to the Court's attention.

By Mr. Ryan:

Q. Now, Mr. Eastman, I direct your attention to the Complaint in this case, which was verified by you, and I ask you whether it was ascertained that the allegations and the names of the defendants resulted from an investigation conducted by your attorney? A. Yes. 584

Q. So that you have sworn to that on information and belief on the basis of the information given to you by your attorney? A. Yes.

Q. Now, has it been ascertained since you verified that Complaint that the defendant Christoph Rott was born in 1948?

Mr. Jaffe: I object to this question and this line of questioning on the ground that it is wholly irrelevant to this proceeding. 585 We have the property and the claim must be presented to us.

Mr. O'Leary: I think it is still relevant that the child was born.

Mr. Jaffe: We concede that the child was born and the date, and state that it is irrelevant.

Mr. Ryan: If this Court should decide that this trust fund should be paid over to the Office of Alien Property, then the Trustee wants a reservation of funds to

586 carry on a litigation under the Trading with the Enemy Act, to have this fund returned.

The Court: You want to have a reservation of funds for what purpose?

Mr. Ryan: For the purpose of pursuing this fund. You see, the position of the Alien Property Office is this—they say "when we vest something it is ours, and if you want to do anything about it, you can sue under the Trading with the
587 Enemy Act."

Mr. Jaffe: That is what the law and the courts say.

Mr. Ryan: The Trustee's duty is to protect this trust, and they take this away from us. The Trustee should be in a position to recover that or at least try to recover it if possible.

The Court: There is something to what you are saying.

You rest your case?
588

Mr. Ryan: All right.

Mr. O'Leary: There is one other infant whose birthday is relevant—Sitta Koster, born May 21st 1946.

The Court: Well, there is no dispute about that.

Mr. Jaffe: I do not know when the child was born. It is irrelevant. They have ample opportunity to establish that child's interest if they file a claim with us. They cannot establish it here.

Mr. O'Leary: I just want to establish 589
the date.

The Court: Yes.

Mr. Ryan: There is just one thing I want to offer. I want to offer in evidence the Brief of the Attorney General in that old case in the Court of Appeals. I feel it is relevant to that litigation and what was decided.

There were certain positions taken in that Brief. They were passed upon by the Court of Appeals unfavorably, and I 590
think that that Brief should go in.

The Court: A proposition of law raised by the Custodian at that time?

Mr. Ryan: No. Demands.

The Court: In the Brief?

Mr. Ryan: In the Brief.

The Court: Demands?

Mr. Ryan: Yes. Demand that the trust fund be paid over to the Office.

The Court: That is no different than 591
the demand was made in any papers they filed in the matter.

Mr. Ryan: No, your Honor; that was a new position they took. In the lower courts my recollection is they did not demand that the money be paid over but in the Court of Appeals they did, and I felt that should be before this Court, to show the extent of the litigation and the effect of the Judgment which was affirmed by the Court of Appeals.

592 The Court: Any objection?

Mr. Jaffe: Certainly. The position we urged there was in what turned out to be an erroneous construction of the vesting order, which is not now before this Court.

The Court: That is what I say, that you took a position on the law which you may have been wrong on, but they have a right to urge it.

Mr. Ryan: I think I should——

The Court: I am going to make short
593 work of this, so you can preserve your record if you want. I will take it subject to a motion to strike out. You are offering now the Brief?

Mr. Ryan: I am offering the Brief of the Attorney General——

The Court: Used on the——

Mr. Ryan: In the Court of Appeals in connection with that appeal from your Honor's Judgment in January, 1948.

The Court: All right, mark it for Iden-
594 tification. I do not think it should go in.

Mr. Ryan: That is why I ask it be taken subject to a motion to strike out.

The Court: I am going to grant that motion anyway.

Mr. Ryan: Can I have it on that ground?

The Court: You can mark it for Identification. If the Appellate Division or the Court of Appeals believes that I made a mistake, they will go ahead and rule on it.

(Marked Plaintiff's Exhibit 13 for Identification.) 595

Mr. Ryan: That is all.

By Mr. O'Leary:

Q. Mr. Eastman, from that investigation made by your attorneys, which you have referred to before—it was on the basis of that investigation that you swore to this Complaint, which alleges that the defendant Sitta Koster was born on May 21st 1946? A. Yes. 596

Mr. Jaffe: Your Honor, I object to the question and the answer, since it is hearsay at best and except to the extent that he relied on something, it is no proof of the fact.

The Court: I will have to sustain the objection. It is hearsay. Strike out the answer.

Q. Mr. Eastman, when was the letter from the Office of Alien Property, dated April 15th 1953, which is marked as Plaintiff's Exhibit 9, received by the Chase National Bank? Does the letter show or have you any knowledge of that? 597

The Court: Is there any stamp on it?

The Witness: There may or may not be.

Mr. Ryan: You had better look at the original (handing to witness).

Mr. Jaffe: I can save time. I have an acknowledgment of the receipt on a copy which

598 they sent here, if you would like to take it. Receipt is acknowledged of the original of this letter dated April 15th 1953, of demand and certified copy of the vesting order, the 11th of May, 1953.

Mr. O'Leary: May 11th 1953?

Mr. Jaffe: Is the date they served this receipt.

The Court: All right. All sides rest?

Mr. Lourie: No. I have one piece of evidence, your Honor. I would like to submit to your Honor copy of the Department of State Bulletin for May 18th 1953, page 720, where it is
599 announced by the White House that the U. S. has decided to terminate further vesting of German property; and I respectfully request that a photostatic copy of that portion of that page be marked in evidence.

Mr. Jaffe: I object. It is merely a statement of policy and it is contrary to law.

Mr. Lourie: One of the defences is that the amendment of the vesting order is contrary to to the United States Government's official policy, and I am introducing a piece of evidence showing
600 what the policy of the United States Government is.

Mr. Jaffe: Your Honor, the law governs what the United States may do and not a policy.

The Court: May I see that?

(Handed to the Court.)

The Court: Well, I will make the same disposition of this that I did of the other. You can mark it in evidence; you make a motion to strike it out and I will grant your motion.

Mr. Jaffe: I move to strike it.

The Court: Mark it first. 601

(Received in evidence and marked Defendant's Exhibit A.)

Mr. Jaffe: And I move to strike it out.

The Court: Granted.

I want you to brief whatever you have on your mind in connection with this within the next 10 days. Is that all right?

Mr. Jaffe: Yes. If your Honor please, I am not offering anything in evidence, but I am going 602 to ask this Court to take judicial notice of certain Federal statutes and publications.

The Court: Give me a Brief on it.

Mr. Jaffe: The reason I mention that is, the New York law is permissive and not mandatory, and I assume your Honor will take judicial notice of it.

The Court: I wish you would put that all in your Brief.

Mr. Jaffe: I will.

The Court: How about the 20th for Briefs? 603 All right?

Mr. Ryan: Just the one Brief—no Replies?

The Court: I do not know whether you want to Reply.

Mr. Ryan: It may help if we have seven days for Reply thereafter.

The Court: All right. Exchange Briefs on the 20th, serve each other with Briefs, and have your Reply Briefs and all papers in on the 26th.

(Decision Reserved.)

Plaintiff's Exhibit 1

604

Trust indenture, identical with Exhibit A, annexed to complaint, printed herein at pages 21 to 53.

Plaintiff's Exhibit 2

THIS AGREEMENT made this 23rd day of May, 1940 (subject to the approval of the Supreme Court of New York County), between BRUNO
605 REINICKE, JR., party of the first part, CHARLES L. COBB, party of the second part, ALBERT A. BEREGH, Guardian ad litem for Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Roland Rott, Rose Lore Rott, Fritz vom Baur, Gerd vom Baur, Hans Adolf Roth and Heide Roth, party of the third part, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as trustee under an Indenture dated March 21, 1928, between Charles L. Cobb and The Chase National Bank of the City of New
606 York, a national banking association organized and existing under the laws of the United States of America, having its office and principal place of business at No. 18 Pine Street, in the Borough of Manhattan, City, County and State of New York, party of the fourth part, and

Special Guardian, appointed to represent Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Roland Rott, Rose Lore Rott, Fritz vom Baur, Gerd vom Baur, Hans Adolf Roth

Plaintiff's Exhibit 2

and Heide Roth, and persons not in being who 607
may be affected by the compromise herein set forth, party of the fifth part,

WITNESSETH:

WHEREAS, on or about March 21, 1928, Charles L. Cobb executed and delivered to The Chase National Bank of the City of New York an Indenture of Trust dated that day, a copy of which is hereto annexed and marked Exhibit A and 608
the said The Chase National Bank of the City of New York became the trustee under the said Indenture of Trust and continued to act and is still acting as such trustee, and

WHEREAS, on or about June 17, 1937, the said The Chase National Bank of the City of New York, as trustee as aforesaid commenced an action in the Supreme Court of New York County seeking (1) that its account as trustee of the trust created by the said Indenture be taken, 609
stated and judicially settled and allowed, (2) that the said account be approved and that it be discharged from all duty responsibility, accountability and liability as trustee under the said Indenture as to all matters and things embraced in the said account, (3) that the said Indenture be construed and that any and all questions that may be raised by the said parties to the said action be determined, (4) that it be determined whether or not the provisions contained in the said Indenture for the accumulation of the said

610 income are valid, (5) that if it be determined that the provisions contained in the said Indenture for the accumulation of income of the said trust are invalid, it also be determined whether it should pay over all accumulated income to the children of Bruno Reinicke, Jr., or should transfer and pay over the principal of the trust, together with all accumulated income to the said Settlor, (6) that it be determined whether it was the intention of the Settlor that the said Bruno Reinicke, Jr., should have the absolute
611 right to require the trustee to lend to him 80% of the principal of the trust and whether the accumulated income of the said trust is also subject to such requirement and that the trustee be instructed as to whether it is required to comply with the said direction of Bruno Reinicke, Jr., to lend him 80% of the principal of the trust and whether the accumulated income of the said trust is also subject to such direction of Bruno Reinicke, Jr., (7) that the trustee be instructed as to whether it may properly comply with the
612 wishes of the said Bruno Reinicke, Jr., with respect to the investment of the trust funds in German securities and (8) that the judgment to be entered in the said action contain such other appropriate directions in the premises with respect to the retention and/or distribution, as the case may be, of the principal and/or accumulated and future income of the said trust, and

WHEREAS, after due service of the summons and complaint in the said action this Court, by

an order dated January 19, 1938, appointed 613
Albert A. Beregh, Esq., Guardian ad litem of the infant defendants, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Roland Rott, Rose Lore Rott, Fritz vom Baur, Gerd vom Baur, Hans Adolf Roth and Heide Roth, and said Guardian ad litem duly qualified to act for his infant wards, and

WHEREAS, Bruno Reinicke, Jr., a defendant in said action, appeared by his attorney and filed 614
an answer herein, praying that the Court adjudge that (1) the said Bruno Reinicke, Jr., was and is the true owner of all of the assets held by the said The Chase National Bank of the City of New York as trustee as aforesaid, (2) that the said Bruno Reinicke, Jr., was and is the real Settlor of the said trust, (3) that the said Indenture of Trust is illegal, invalid, void and contrary to the laws of the State of Illinois, (4) that the said trustee account to the said Bruno Reinicke, Jr., for all of the property which it 615
received as such trustee, (5) that the said Bruno Reinicke, Jr., is entitled to immediate possession of the income accumulation and the corpus of the said trust, (6) that the Court determine what sums, if any, may be lawfully and legally due the said trustee, (7) that the said trustee be directed to pay over to the said Bruno Reinicke, Jr., the income accumulation and corpus of all of the said trust assets and (8) or in the alternative, that a decree may be entered, directing the trustee to make such investments of the corpus

616 of the trust estate as the said Bruno Reinicke, Jr., has heretofore directed and may in the future direct and that the said decree further direct that the said trustee loan to the said Bruno Reinicke, Jr., a sum of money equal to but not in excess of 80% of the principal of the said trust estate outstanding at any time upon such terms, security and interest, if any, as the said Bruno Reinicke, Jr., may direct, and

WHEREAS, the said Guardian ad litem for the
617 said infant defendants, Albert A. Beregh, having filed an answer on behalf of his infant wards to the said complaint alleging that they are strangers to all and singular the trust, agreements, matters and things set forth in the complaint in this action and that they claim such interest in said trusts, agreements and matters as they may be entitled to and they submit their rights and interest in the matter in question in this said action to the protection of the Court, and

618

WHEREAS, the issues raised by the said answers having regularly come on for trial and the said Court by an order dated July 1, 1938, having referred all of the issues in the said action to William H. Chorash, Esq., as referee to hear and determine all the issues of law and fact and to take and settle the trustee's account herein, and

WHEREAS, a trial having been had before the said referee and the said referee having made and filed on or about December 19, 1938, his

decision herein, and having made and filed on or about January 31, 1939, his findings of fact and conclusions of law and this Court by an order dated February 16, 1939, after motion, fixed the compensation of the said referee and the said Guardian ad litem, and 619

WHEREAS, a judgment having been duly made and entered in this Court on or about February 17, 1939, a copy of which said judgment is hereto annexed and made a part hereof and marked Exhibit B, and 620

WHEREAS, the said trustee, the said Bruno Reinicke, Jr., and the said Guardian ad litem have appealed to the Appellate Division of the Supreme Court, First Department, from different parts of the said judgment and the said appeal is now pending, and

WHEREAS, all of the said parties are desirous that the controversy between them be adjusted and settled as hereinafter provided and that the said Indenture dated March 21, 1928, remain in full force and effect, except as hereinafter provided. 621

NOW THEREFORE, the parties of the first, second, third, fourth and fifth parts, in consideration of the covenants herein contained, do hereby covenant and agree as follows:

1. Upon the approval of the Supreme Court of New York County of this agreement, and the

622 compromise and settlement herein provided, the parties hereto will by stipulation, or any other appropriate writing, withdraw and no longer prosecute their appeals to the Appellate Division of the Supreme Court, First Department from the judgment of this Court, made on or about February 17, 1939, and they agree not to contest or otherwise attack or attempt to set aside the order approving this agreement.

2. The parties agree that Section 23 of the
623 said Indenture is to be deleted and omitted from the said trust Indenture and the trustee is to continue to operate under the said trust agreementment as if the said provision had never been contained in the said instrument.

3. The indebtedness of the said Bruno Reinicke, Jr., to the trustee for loans made by him from the trust estate in the amount of $25,000, plus interest, represented by a demand note dated January 29, 1930, is hereby discharged
624 and the said Bruno Reinicke, Jr., shall be no longer indebted to the said trustee for the said loans.

4. Upon the approval of this agreement, the trustee is authorized and directed to pay out of the principal of the trust the sum of $10,000 *(Ten thousand)* to William H. Mondell, Esq., and William Whynman, Esqs., attorneys for the said Bruno Reinicke, Jr., as payment to them for services rendered by them for the said Bruno Reinicke, Jr. *and further $10000 to the said Bruno Reinicke jr.*

Plaintiff's Exhibit 2

5. It is further understood and agreed that should this agreement fail to receive the approval of the Supreme Court of New York County, the parties hereto shall be restored to the same positions to which they were immediately prior to the signing of this agreement. 625

6. This agreement shall enure to the benefit and be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns.

7. The parties hereto further agree to execute any and all papers or documents necessary to effectuate the purpose and intent of this agreement. 626

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals the day and year first above written.

BRUNO REINICKE JR.
ELISABETH REINICKE
CHARLES L COBB 627
As Guardian ad litem for Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Roland Rott, Rose Lore Rott, Fritz vom Baur, Gerd vom Baur, Hans Adolf Roth and Heide Roth, Infants.

Plaintiff's Exhibit 2

628 THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York
By (Illegible)
Vice President

As Special Guardian for Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete
629 Elisabeth Reinicke, Roland Rott, Rose Lore Rott, Fritz vom Baur, Gerd vom Baur, Hans Adolf Roth and Heide Roth, Infants.

May 23, 1940

Handwriting by Bruno Reinicke jr. with consent of Elisabeth Reinicke [Appears in italics above.]

630

EXHIBIT A

Trust indenture forming a part of Plaintiff's Exhibit 2 is identical with Exhibit A, annexed to complaint, printed herein at pages 21 to 53.

Plaintiff's Exhibit 3 631

JUDGMENT

At a Special Term, Part III, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House thereof, on the 30th day of January, 1948.

Present—Hon. Benjamin F. Schreiber, *Justice.* 632

[SAME TITLE.]

The summons and complaint herein having been duly served upon the defendants herein as appears by the affidavits of Erwin Hutchins, sworn to the 27th and 29th days of April, 1947, pursuant to an order of publication made by this Court dated the 14th day of April, 1944, and filed 633
in the County Clerk's office on April 17, 1944, the affidavit of Thomas C. Duffy, sworn to the 27th day of April, 1944, and the affidavit of Arthur J. Cavanagh, sworn to the 1st day of June, 1944, and Jeremiah P. Lyons, Esq., having been duly appointed Guardian *ad Litem* for the infant defendants, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Fritz vom Baur, Hans Adolf Roth, Heide Roth and Gerd vom Baur by order of this Court dated the 28th

Plaintiff's Exhibit 3

634 day of August, 1944, and filed in the Office of the County Clerk on August 29, 1944, and the said Guardian *ad Litem* having filed a notice of appearance on behalf of said infants and the affidavit and consent required by law and the said infants, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Fritz vom Baur, Hans Adolf Roth, Heide Roth and Gerd vom Baur, having answered the complaint herein by their said Guardian *ad Litem* and James L. Duncanson, Esq., having appeared herein on behalf
635 of all the defendants, except the defendant, Charles L. Cobb, and Honorable James E. Markham, Alien Property Custodian of the United States by his petition verified the 16th day of March, 1945, having requested that he be permitted to intervene as a party defendant in the above-entitled action and John F. X. McGohey, Esq., U. S. Attorney for the Southern District of New York and Robert Herbert Wechsler, Esq., Assistant Attorney General having moved by notice of motion dated the 21st day of April,
636 1945, returnable on the 30th day of April, 1945, for leave for the said James E. Markham as Alien Property Custodian to intervene as a defendant in this cause, and The Chase National Bank of the City of New York, the plaintiff herein having filed an answer to the petition of the said James E. Markham and Jeremiah P. Lyons, Guardian *ad Litem* for the defendants, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Fritz vom Baur, Heide

Roth, Hans Adolf Roth and Gerd vom Baur, 637
having filed an answer to the said petition for intervention and there being no objections to the said motion for leave to intervene and an order having been made by this Court on the 22nd day of May, 1946, granting the prayer of the said James E. Markham, Alien Property Custodian, for leave to intervene and for leave to file an answer herein, and an answer having been filed by the said Alien Property Custodian, verified on his behalf on the 16th day of March, 1945, and the said Jeremiah P. Lyons having been duly 638
appointed as Guardian *ad Litem* for persons unknown and for persons not in being and for the future contingent interests of persons not in being who are or may be affected by the judgment to be entered in this action, and the said Jeremiah P. Lyons, Esq., having duly filed the affidavit and consent required by law as such Guardian *ad Litem,* and it having been stipulated by the attorneys for the parties that the answer of Tom C. Clark, Attorney General of the United States, sworn to on his behalf on 639
the 25th day of April, 1947, should be substituted in place and stead of the answer of James E. Markham, Alien Property Custodian, previously filed and referred to above, and none of the other defendants having appeared or answered or made a motion addressed to the sufficiency of the complaint herein, and the said Guardian *ad Litem* having filed his report, and the issues raised by the pleadings having regularly

640 come on for trial before this Court without a jury at Special Term, Part III of this Court on the 13th day of June, 1947, and after hearing the proofs and allegations of the parties and the decision of the Court in writing having been filed and the account and supplemental account of the plaintiff as trustee under indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York having been filed and the affidavit of services of Thomas A. Ryan having been filed and
641 the affidavit of services of Jeremiah P. Lyons having been filed and the Military Service affidavit having been filed, and Notice of Pendency of Action under Rule XIX of the Special Term Rules of this Court having been filed,

Now, on Motion of Milbank, Tweed, Hope, & Hadley, attorneys for the plaintiff, Thomas A. Ryan, Esq., of Counsel, it is,

ORDERED, ADJUDGED AND DECREED, as follows:

642

1. The plaintiff is entitled to judgment as hereinafter provided.

2. The motion of the Alien Property Custodian having been granted to amend the title of this action by adding James E. Markham, Alien Property Custodian of the United States as a party defendant, and it having been stipulated that Tom C. Clark be made a party defendant herein as a successor to the Alien Property Custodian of the United States, the title of this

action is hereby changed so as to read as herein- 643
before set forth in this judgment.

3. The plaintiff, The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, is entitled to judgment to have its account judicially settled.

4. The plaintiff, The Chase National Bank of the City of New York, has duly accounted for 644
all and singular its acts and proceedings as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, and for all of the property which came or should have come into its hands as such Trustee.

5. The account of the proceedings of The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb 645
and The Chase National Bank of the City of New York, for the period from July 12, 1938 to October 19, 1944, is hereby judicially settled in all respects, and the acts and transactions and retention of investments of said Trustee therein set forth are in all respects approved.

6. The plaintiff, The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase Na-

tional Bank of the City of New York, is charged and credited as follows:

SUMMARY STATEMENT

(July 12, 1938 to February 3, 1944)

As to Principal—

The Accountant charges itself as follows:		
With the amount of all property on hand on July 12, 1938, date of last account as set for in Schedule A		$679,073.73
With all additional property received as set forth in Schedule A-1		161.76
		$679,235.49
The Accountant credits itself as follows:		
With the amount of all payments for administration expenses chargeable to principal as set forth in Schedule D	$36,764.84	
With the amount of all distributions of principal as set forth in Schedule E ..	25,000.00	61,764.84
Leaving a balance on hand of consisting of property and cash as set forth in Schedule F		$617,470.65

Plaintiff's Exhibit 3

As to Income—

649

The Accountant charges itself as follows:

With the amount of all property on hand July 12, 1938, date of last account as set forth in Schedule G		$ 5,126.71
With the amount of all income collected from July 12, 1938 to February 3, 1944		—
Personal Property as set forth in Schedule H	$51,119.89	
Real Property as set forth in Schedule H-1	3,549.94	54,669.83
		$ 59,796.54

650

The Accountant credits itself as follows:

651

With the amount of all payments made for administration expenses chargeable against income:

Personal Property as set forth in Schedule I	$4,388.66

Plaintiff's Exhibit 3

652

Real Property as set forth in Schedule I-1	$1,594.65	$ 5,983.31
With the amount of all payments made to or for the account of the beneficiaries as set forth in Schedule J	30,693.48	$ 36,676.79

653 Leaving a cash balance on hand February 4, 1944 of $ 23,119.75

The foregoing principal balance of $617,470.65 consists of cash in the sum of $12.05 and other property on hand on February 3, 1944, having an inventory value of $617,458.60.

The said principal balance represents the inventory value of the cash and securities on hand in the principal account on February 3, 1944, and does not represent the market or actual

654 value of the property held by the Trustee or a sum of money or its equivalent for which the trustee is chargeable.

The said principal balance is subject to commissions in the sum of $8.25 as shown by Schedule L.

The foregoing income balance of $23,119.75 consists entirely of cash.

Plaintiff's Exhibit 3

SUMMARY STATEMENT 655

(From February 4, 1944 to October 19, 1944)

As to Principal—

The Accountant charges itself as follows:		
With the amount of all property on hand on February 3, 1944, date of Part I of this account as set forth in Schedule A	$617,470.65	656
The Accountant credits itself With no credits	—	
Leaving a balance on hand of ..... consisting of property and cash as set forth in Schedule B.	$617,470.65	

As to Income— 657

The Accountant charges itself as follows:	
With the amount of all property on hand on February 3, 1944, date of Part I of the account as set forth in Schedule C	$ 23,119.75

Plaintiff's Exhibit 3

658 With the amount of all income collected to October 19, 1944:

Personal property as set forth in Schedule D ...	$ 6,379.99	
Real Property as set forth in Schedule D-1	220.00	$ 6,599.99
		$ 29,719.74

659 The Accountant credits itself as follows:

With the amount of all payments made for administration expenses chargeable against income:

Personal Property as set forth in Schedule E ...	$ 8,032.38	
Real Property as set forth in Schedule E-1	208.78	$ 8,241.16

660 Leaving a cash balance on hand of ..... on October 19, 1944 $ 21,478.58

The foregoing principal balance of $617,470.65 consists of cash in the sum of $12.05 and other property on hand on October 19, 1944, having an inventory value of $617,458.60.

Plaintiff's Exhibit 3

The said principal balance represents the inventory value of the cash and securities on hand in the principal account on October 19, 1944, and does not represent the market or actual value of the property held by the trustee or a sum of money or its equivalent for which the trustee is chargeable. 661

The said principal balance is subject to commissions in the sum of $8.25 as shown by Schedule L of Part I of the account, dated February 3, 1944.

The foregoing income balance of $21,478.58 consists entirely of cash. 662

7. The Chase National Bank as such Trustee is entitled to judgment to have the said trust identure construed.

8. The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York is authorized in its discretion to exercise the administrative powers conferred upon it by the said Trust Indenture which are subject to the control of the said Bruno Reinicke during the period after this judgment becomes final and until the termination of hostilities with the German Reich and for such other further period as the control of the said Bruno Reinicke Jr. over the said administrative powers is subject to blocking or other Governmental control either of this country or of any government in Germany. 663

Plaintiff's Exhibit 3

664 9. Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive the income of the said trust which had been accumulated as of the date of the making of the Vesting Order by the Alien Property Custodian #4551 to wit on January 29, 1945.

10. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian is not entitled to receive any part of the accumu-
665 lated income of said trust held by the said Trustee which has been collected of the said Trustee since the date of the said Vesting Order #4551.

11. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States is not entitled to receive any income which may be collected hereafter during the lifetime of Bruno Reinicke, Jr., the settlor in the said trust.

666 12. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian has not succeeded to the powers with respect to the management and disposition of the trust lodged in the said settlor, Bruno Reinicke, Jr. and his wife, Elisabeth Reinicke.

13. It was the intention of the Settlor that all of the income from said trust and the accumulated income thereof which should not be used for the children of said Bruno Reinicke, Jr.

should be accumulated for the benefit of those ultimately entitled to take the corpus of the trust upon its termination. 667

14. The said Tom C. Clark, Attorney General as successor to the Alien Property Custodian of the United States has no power to change the terms of the said trust indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, and to confer upon himself property rights superior to those of his predecessors in interest. 668

15. The power retained by the said Bruno Reinicke, Jr. to direct the payment of income is a personal power and the Alien Property Custodian did not succeed to such power by reason of said Vesting Order #4551.

16. The powers over the management of the trust fund retained by Bruno Reinicke, Jr. are also personal powers and the Alien Property Custodian did not succeed to said powers by the said Vesting Order. 669

17. The Chase National Bank of the City of New York is directed to make the following payments out of the principal or accumulated income of the said trust:

To Jeremiah P. Lyons, Esq., the sum of Thirty-five hundred Dollars ($3,500 00/100) which sum is allowed to him for his services as Guardian ad Litem herein;

Plaintiff's Exhibit 3

670 To Thomas A. Ryan, Esq., the sum of Three thousand Dollars ($3,000 00/100) which sum is allowed as plaintiff's counsel fees;

To Milbank, Tweed, Hope, Hadley & McCloy, Esqs., the costs and disbursements of the plaintiff as taxed by the County Clerk who is hereby authorized to insert the amount thereof in this judgment, to wit,

Dollars ($221 75/100), and also to tax as part of the plaintiff's costs the cost of the steno-
671 graphic minutes which should be included in the plaintiff's bill of costs.

18. The Chase National Bank of the City of New York is hereby released, relieved and forever discharged of and from any and all liability or accountability as to all matters and things set forth in the said account and supplemental account or embraced in this judgment or in any way related to the said trust or the administration thereof except as to its liability to account for
672 the balance of income and principal remaining in its hands as such Trustee as shown by the said account and supplemental account.

ENTER

B. F. S.
J. S. C.

Plaintiff's Exhibit 3

673

JUDGMENT OF AFFIRMANCE

SUPREME COURT

NEW YORK COUNTY

File No. 6987—1944

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, 674

Plaintiff,

—against—

BRUNO REINICKE, JR., ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA MARGARETE ELISABETH REINICKE, KLAUS REINICKE, HANS EGON SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, HANS EBERHARDT SCHWARZBURGER, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, 675 ROLAND ROTT, ROSE LORE ROTT, CHARLES L. COBB, FRITZ REINICKE, GERTRUD ERNST, ELLA SCHWARZBURGER, CHARLOTTE ROTT and J. HOWARD MCGRATH, Attorney General of the United States, as Successor to the Alien Property Custodian, Intervenor,

Defendants.

The defendant Tom Clark, Attorney General of the United States, as Successor to the Alien Property Custodian, Intervenor and defendant

676 in this action, having appealed to the Appellate Division of the Supreme Court, First Department, from the judgment of this Court dated the 30th day of January, 1948 and duly entered in the Office of the Clerk of the County of New York on Febru ry 13, 1948, and the said Tom Clark having been succeeded by J. Howard McGrath; and said appeal having been duly heard; and the said Appellate Division by its order dated the 12th day of December, 1949 having affirmed the said judgment in all things (one
677 of the Justices of the said Appellate Division dissenting),

Now, on motion of Milbank, Tweed, Hope & Hadley, attorneys for the plaintiff, it is

ADJUDGED, that the judgment dated the 30th day of January, 1948, duly filed in the Office of the Clerk of the County of New York and entered therein on the 13th day of February, 1948, be and the same hereby is in all things affirmed.

678

Judgment entered this 13th day of January, 1950.

ARCHIBALD R. WATSON
Clerk

Plaintiff's Exhibit 3

JUDGMENT OF AFFIRMANCE ON REMITTITUR FROM COURT OF APPEALS 679

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

File No. 6987/1944

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, 680

Plaintiff,

—against—

BRUNO REINICKE, JR., ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA MARGARETE ELISABETH REINICKE, KLAUS REINICKE, HANS EGON SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, HANS EBERHARDT SCHWARZBURGER, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, ROLAND ROTT, ROSE LORE ROTT, CHARLES L. COBB, FRITZ REINICKE, GERTRUD ERNST, ELLA SCHWARZBURGER, CHARLOTTE ROTT and J. HOWARD MCGRATH, Attorney General of the United States, as Successor to the Alien Property Custodian, Intervenor, 681

Defendants.

The above named defendant, J. Howard McGrath, having appealed to the Court of Appeals of the State of New York from the judgment of affirmance of this Court, entered upon the order of the Appellate Division of the Supreme Court, First Department, in the office of the Clerk of the County of New York on the 12th day of January, 1950, affirming the judgment

682 in favor of the plaintiff and against the defendants heretofore entered herein in the office of the said Clerk on the 13th day of February, 1948; and the said appeal having been duly argued at the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said judgment so appealed from as aforesaid be affirmed, with costs payable to the respondents out of the fund; and having further ordered and adjudged that the proceedings herein be remitted to this
683 Court, there to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein; and the order having been filed herein making the order and judgment of the Court of Appeals the order and judgment of this Court; now, on motion of Milbank, Tweed, Hope & Hadley, attorneys for the plaintiff, it is hereby

ORDERED AND ADJUDGED, that said judgment entered herein on the 12th day of January, 1950,
684 be and the same hereby is affirmed; and it is further

ORDERED AND ADJUDGED, that the costs of the plaintiff in the sum of One Hundred Ninety and 71/100 Dollars ($190.71) and the costs of Jeremiah P. Lyons, the Guardian ad Litem, in the sum of Fifty-One and 61/100 Dollars ($51.61), as taxed, be paid out of the fund.

Judgment signed and entered this 16th day of August.

ARCHIBALD R. WATSON
Clerk

Plaintiff's Exhibit 4

685

At a term of the Appellate Division of the Supreme Court held in and for the First Judicial Department in the County of New York, on the 12th day of December, 1949.

Present—Hon. Edward S. Dore,
Justice Presiding
" Albert Cohn,
" Joseph M. Callahan,
" John Van Voorhis,
" Bernard L. Shientag, *Justices.* 686

2822

The Chase National Bank of the City of New York, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and the Chase National Bank of the City of New York,

Pltf.-Respt.,

vs

J. Howard McGrath, Attorney General of the United States, as Successor to the Alien Property Custodian, Intervenor, 687

Deft.-Applt.,

Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno Carl Reinicke, et al.,

Defts.-Respts.,

Jeremiah P. Lyons, guardian ad litem for infants Robert Hans Reinicke, et al.,

Defts.-Respts.

An appeal having been taken to this court by the above-named defendant-appellant from a

judgment of the Supreme Court New York County, entered on the 13th day of February, 1948,

And said appeal having been argued by Mr. Robert B. McKay of counsel for the appellant, by Mr. Thomas A. Ryan of counsel for the respondent, The Chase National Bank of the City of New York, and by Mr. Jeremiah P. Lyons, guardian ad litem in person; and due deliberation having been had thereon,

It is ordered and adjudged that the judgment so appealed from be and the same hereby is, in all things affirmed. (One of the Justices dissents.)

ENTER:

GEORGE T. CAMPBELL,
Clerk.

Plaintiff's Exhibit 5

ORDER FOR JUDGMENT ON REMITTITUR OF COURT OF APPEALS 691

At a Special Term, Part II, of the Supreme Court, held in and for the County of New York, at the Court House in the City and County of New York, on the 16th day of June, 1950.

Present—Hon. Benjamin F. Schreiber, *Justice.*

File No. 6987—1944

The Chase National Bank of the City of New York, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, 692

Plaintiff,

—against—

Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Marie Margarete Elisabeth Reinicke, Klaus Reinicke, Hans Egon Schwarzburger, Ilse Schwarzburger Roth, Hans Adolf Roth, Heide Roth, Hans Eberhardt Schwarzburger, Karla Maria Rott vom 693
Baur, Fritz vom Baur, Gerd vom Baur, Roland Rott, Rose Lore Rott, Charles L. Cobb, Fritz Reinicke, Gertrud Ernst, Ella Schwarzburger, Charlotte Rott and J. Howard McGrath, Attorney General of the United States, as Successor to the Alien Property Custodian, Intervenor,

Defendants.

The above named defendant, J. Howard McGrath, Attorney General of the United States, having appealed to the Court of Appeals of the

Plaintiff's Exhibit 5

State of New York from the judgment of affirmance of this Court entered upon the order of the Appellate Division of the Supreme Court, First Department, in the office of the Clerk of the County of New York dated the 13th day of January, 1950, affirming the judgment in favor of the plaintiff and against the defendants heretofore entered in the office of the said Clerk on the 13th day of February, 1948, granting judgment in favor of the plaintiff; and the said appeal having been duly argued at the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said judgment of affirmance so appealed from be affirmed and judgment entered for the plaintiff, with costs to the respondents payable out of the fund; and having ordered and adjudged that the proceedings in the Court of Appeals be remitted to this Supreme Court, there to be proceeded upon according to law;

On reading and filing the remittitur to the said Court of Appeals herein, now, on motion of Milbank, Tweed, Hope & Hadley, attorneys for the plaintiff herein, Thomas A. Ryan, of counsel, it is hereby

ORDERED that the order and judgment of the said Court of Appeals be and the same hereby are made the order and judgment of this Court.

Enter,

B. F. S.
J. S. C.

Filed
June 17, 1950
New York County Clerk's Office

Plaintiff's Exhibit 6

697

ORDER OF JUSTICE LEVY ON MARCH 7, 1941

At a Special Term, Part I, of the Supreme Court of the State of New York, held in and for the County of New York, at the County Court House, in the Borough of Manhattan, City of New York, on the 7th day of March, 1941.

Present—Hon. Aaron J. Levy, *Justice.* 698

[SAME TITLE.]

It appearing that all of the persons who have appeared in the above entitled action desire that the judgment herein, duly entered in the office of the Clerk of this Court on February 17, 1939, should be amended and that it is to the best interest of the infants involved in this proceeding that the said judgment should be amended, and 699 it appearing that William H. Chorosh, the referee herein, having appeared in open court on the argument of the said motion on March 5, 1941, and having moved the court for leave to intervene and requesting the court to re-examine his allowance of compensation, as referee herein, as reduced by stipulation and as fixed in the judgment herein in said reduced amount, and requesting the court to reconsider the said allowance and to provide in the proposed amended judgment a fair and

reasonable compensation for his services herein, and the court having granted the said motion, and

Upon reading and filing the notice of motion herein, dated the 19th day of February, 1941, with proof of due service thereof, the affidavit of Lester A. Kraushaar, sworn to the 18th day of February, 1941, the affidavit of L. Reyner Samet, sworn to the 5th day of March, 1941, the affidavit of William Whynman, sworn to the 4th day of March, 1941, the affidavit of Albert A. Beregh, sworn to the 4th day of March, 1941, the affidavit of William H. Chorosh, sworn to the 5th day of March, 1941, and the stipulation and consent made by all of the attorneys who appeared herein, dated the 18th day of February, 1941, and upon all the pleadings and proceedings herein, and after hearing Milbank, Tweed & Hope, by L. Reyner Samet, of counsel, attorneys for the plaintiff, and William Whynman, attorney for the defendant, Bruno Reinicke, Jr., in support of said motion, and Albert A. Beregh and William H. Chorosh, appearing and not opposing, and due deliberation having been had,

Now, on motion of Milbank, Tweed & Hope, attorneys for the plaintiff and William Whynman, attorneys for the defendant, Bruno Reinicke, Jr., it is

ORDERED, that the said motion be, and the same hereby is in all respects granted, and it is further

ORDERED, that the aforesaid judgment entered herein on the 7th day of February, 1939, be and

the same hereby is amended *nunc pro tunc* so as 703
to read as follows:

"SUPREME COURT
OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, 704

Plaintiff,

—against—

BRUNO REINICKE, JR., ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA MARGARETE ELISABETH REINICKE, KLAUS REINICKE, HANS EGON SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, HANS EBERHARDT SCHWARZBURGER, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, ROLAND ROTT, ROSE LORE ROTT, CHARLES L. COBB, FRITZ REINICKE, GERTRUD ERNST, ELLA SCHWARZBURGER and CHARLOTTE ROTT, 705

Defendants.

JUDGMENT

The summons and complaint therein having been duly served upon the defendants herein

706 as appears by the affidavits of Leonard H. Cohen, sworn to June 28, 1937, Thomas P. Farley, sworn to July 2, 1937, and November 18, 1937, Frank J. Cummiskey, sworn to August 5, 1937, John J. Schorsch, sworn to August 6, 1937, and Hans Breymann, sworn to September 24, 1937, and duly filed herein, and by an order made and entered herein on June 19, 1938, Albert A. Beregh, Esq., was duly appointed Guardian ad litem of the in-
707 fant defendants, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Roland Rott, Rose Lore Rott, Frits vom Baur, Hans Adolf Roth and Heide Roth, and the defendant, Bruno Reinicke, Jr., having appeared by his attorney, William Whynman, Esq., and having filed an answer, and the infant defendants, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, Roland Rott, Rose Lore Rott, Fritz vom Baur, Gerd
708 vom Baur, Hans Adolf Roth and Heide Roth, having appeared by their Guardian ad litem, Albert A. Beregh, Esq., and having filed an answer and none of the other defendants having appeared or answered or made a motion addressed to the sufficiency of the complaint herein; and the issues of this action having been referred by an order made on July 1, 1938, and entered on July 5, 1938, to Honorable William H. Chorosh, as Referee, to hear and determine the same, and the Referee having duly taken the oath required by law and

having received the accounts of the plaintiff 709
and having heards the proofs of the parties and after due deliberation having duly rendered and filed his opinion herein on December 19, 1938, in the office of the clerk of this Court and having duly rendered and filed his report herein in the same office on February 17, 1939, stating the findings of fact and conclusions of law herein and directing judgment as hereinafter stated, and directing that judgment be entered accordingly and the said 710
Referee and the said Guardian ad litem having made a motion in this Court for an order allowing each of them a reasonable allowance and compensation for their services herein and this Court by an order duly made and entered on February 16, 1939, having allowed the said Referee for his services herein the sum of $10,000 and having allowed the said Guardian ad litem for his services herein the sum of $4,000,

Now, on motion of William Whynman, at- 711
torney for the defendant, Bruno Reinicke, Jr., it is

ORDERED, ADJUDGED AND DECREED as follows:

1. Bruno Reinicke, Jr., was and is the true Settlor of the Trust Indenture dated March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York.

2. The sole right of reversion of the assets of the Trust was continued to be, and is in the defendant, Bruno Reinicke, Jr.

Plaintiff's Exhibit 6

712 3. The Trustee is entitled to have the account of its proceedings as Trustee as aforesaid settled and allowed.

4. The Trustee has fully accounted for all of its acts and proceedings as such Trustee and for all property which came or should have come into its hands from the 21st day of March, 1928 to the 12th day of July, 1938.

5. The account of the Trustee of its proceedings as such Trustee as aforesaid as filed
713 herein is judicially settled, approved and in all respects allowed and the acts, transactions and proceedings of the Trustee are in all respects ratified, approved and confirmed.

6. The plaintiff, the Chase National Bank of the City of New York, as Trustee under the Indenture of Trust dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York is charged and credited as follows:

714 The Trustee is Charged with:

As to Principal

With the amount of all property originally received as set forth in Schedule A	$365,980.99
With the amount of additonal property received as set forth in Schedule A-1	185,231.00

Plaintiff's Exhibit 6

With the amount of additional property received by transfer of funds from income as set forth in Schedule A-2		$167,933.74	715
With the amount of all increases on the sale or disposition of investments from funds added to the corpus from income as set forth in Schedule C-2		32,928.90	
		$752,074.63	716
The Trustee is Credited with:			
With the amount of all decreases on the sale or disposition of property received as set forth in Schedule B	$51,522.28		
With the amount of all decreases on the sale or disposition of investments from funds added to the corpus from income as set forth in Schedule C-2	10,899.41		717
With the amount of all payments made for administration expenses as set forth in Schedule D	10,579.21	73,000.90	
Leaving a balance of consisting of securities and cash, as set forth in Schedule		$679,073.73	

Plaintiff's Exhibit 6

718 The Trustee is Charged with:

As to Income

With the amount of income collected as set forth in Schedule E		$233,587.16
With the amount of income collected on real property as set forth in Schedule E-1		8,595.07
		$242,182.23

719 The Trustee is Credited with:

With the amount of funds transferred to corpus as set forth in Schedule A-2	$167,933.74	
With the amount of all expenses in connection with the real property as set forth in Schedule E-1	6,891.61	
With the amount of all administration expenses as set forth in Schedule G	31,587.30	
720 With the amount of all payments made for interest on loans as set forth in Schedule G-1	9,430.68	
With the amount of all payments made to or for the account of the Beneficiaries as set forth in Schedule H	22,375.56	238,218.89
Leaving a cash balance of		$ 3,963.34

There is also to be included with the above income on hand 6463.19 Reichsmarks, which are held at the Konversionkasse fuer deutsche Auslandeschulden, Berlin, as shown in Schedule E, and 2 notes in the present amount of $179.93 covering past due rent on real property as shown in Schedule E-1. 721

7. The plaintiff, The Chase National Bank of the City of New York as Trustee as aforesaid, is discharged from any further liability or accountability with respect to all matters and things embraced in the said account. 722

8. The Chase National Bank of the City of New York as Trustee as aforesaid, acted properly in not complying with the request of the said Bruno Reinicke, Jr. to loan him 80% of the principal and accumulated income of the trust fund as well as his request for the investment of $87,000 in German securities and the Trustee should not comply with similar directions in the future without an order of direction to do so from a court of competent jurisdiction. 723

9. The said Trust Indenture violates the laws of Illinois in respect to the accumulation of income in force at the time of the execution of the Trust Indenture and now still in force, in that it provided that after the death of Bruno Reinicke, Jr., his widow, the defendant, Elisabeth Reinicke, had the right to direct the accumulation of income during her life with additional provisions for the

724 benefit of their children and others, until such children arrive at the respective ages of thirty-six years.

10. The defendant, Bruno Reinicke, Jr., is not guilty of laches.

11. And it appearing that the sum of $847.00 has been paid by the said Trustee out of the balance of principal found as above remaining in its hands to Louis J. Schwartz pursuant to stipulation for stenographic ser-
725 vices rendered by him herein and that payments of $6,863.39 out of the income of the Trust has been paid to Bruno Reinicke, Jr. and to William H. Mondell at the direction of Bruno Reinicke, Jr. pursuant to the provisions of Article '4' of the said Trust Indenture, and the sum of $195.41 has been paid to The Chase National Bank of the City of New York as its commissions on income which it received to September 21, 1938, the said payments are hereby ratified, approved and con-
726 firmed.

12. The plaintiff, The Chase National Bank of the City of New York, as Trustee as aforesaid, is directed to make the following payments out of the principal cash balance now in its hands as follows:

To William H. Chorosh the sum of $7,500 as compensation for his services as rendered herein, and the sum of $84.37 as expenses or disbursements incurred by him as such Referee;

Plaintiff's Exhibit 6

To Albert A. Beregh, Guardian ad litem for the infant defendants, the sum of $3,200 as compensation for his services as such Guardian ad litem herein; 727

To Arthur Nussbaum the sum of $350 as compensation for his services as an expert witness at the hearings herein;

To Herbert V. Mueller the sum of $250 as compensation for his services as an expert witness at the hearings herein;

To Charles L. Cobb the sum of $150 as reimbursement for his expenses in connection with his appearance at the hearings herein; 728

To The Chase National Bank of the City of New York, individually, the sum of $105.79, which said sum is allowed to it as and for its commissions for receiving and paying over the principal of the said Trust fund;

To Milbank, Tweed & Hope, attorneys for the plaintiff, the sum of $106.21 for their disbursements herein; 729

To William H. Mondell and William Whyman, attorneys for Bruno Reinicke, Jr., the sum of Twenty Thousand Dollars ($20,000).

13. And all the persons in interest having consented thereto, Section 23 of the said Trust Indenture be and the same hereby is deleted and omitted from the said Trust Indenture and the said The Chase National Bank of the City of New York, as Trustee, is to continue to operate under the said Trust Agreement

730 as if the said provision had never been contained in the said instrument.

14. The indebtednes of the said Bruno Reinicke, Jr., to the said Trustee for loans made by him from the Trust estate in the amount of Twenty-Five Thousand Dollars ($25,000), plus interest, represented by a demand note dated January 29, 1930, is hereby discharged and the said Bruno Reinicke, Jr., shall be no longer indebted to the said Trustee for the said loans.

731

15. The Chase National Bank of the City of New York, upon complying with the provisions of its judgment, be and it is hereby relieved, released and forever discharged of and from any and all liability, accountability or responsibility with respect to any matter or thing embraced in this judgment or contained in the said account, except with regard to the property which is not disposed of pursuant to this decree which said property the

732 said Trustee is directed to continue to hold, administer and pay out pursuant to the terms and conditions of the said Trust Indenture as originally made, except that the provision of the said Indenture, entitled Section 23, is to be deleted and omitted from the Trust Indenture.

JUDGMENT made and entered this 17th day of February, 1939.

(Sgd) ARCHIBALD R. WATSON
Clerk

Plaintiff's Exhibit 6

The foregoing judgment is approved as to form. 733

WILLIAM H. CHOROSH
Referee."

and it is further

ORDERED, that the Clerk of this Court correct the judgment record in this action to conform herewith, and attach this order to the judgment roll filed herein on the 17th day of February, 1939, and it is further

734

ORDERED, that the said stipulation and consent dated the 18th day of February, 1941, be and the same hereby is in all respects approved; ratified and confirmed, and Albert A. Beregh, Guardian ad litem for the infant defendants herein, is hereby permitted and directed to join in the said stipulation and consent, and it is further

ORDERED, that the plaintiff, The Chase National Bank of the City of New York, as Trustee as aforesaid, is directed to pay to Albert A. Beregh, Esq., 735 Guardian ad litem for the infant defendants, out of the principal cash balance remaining in its hands the sum of 1,800, as compensation for his services as such Guardian ad litem herein since the making and entry of the original judgment herein,

And it appearing that the compensation to William H. Chorosh, for his services as Referee herein, should be re-examined, and the Court having done so, it is

Plaintiff's Exhibit 6

736 Ordered, that the plaintiff, The Chase National Bank of the City of New York, as Trustee as aforesaid, is directed to pay to William H. Chorosh, out of the principal cash balance remaining in its hands, the sum of $1,000, which said sum, together with the sum of $7,500, heretofore paid to the said Referee and fixed in the judgment herein pursuant to stipulation, amounts to $8,500, which sum is found to be a fair and reasonable compensation for his said services as Referee herein.

737 Enter

A. J. L.,
J. S. C.

Archibald R. Watson,
Clerk.

738

Plaintiff's Exhibit 7 739

UNITED STATES OF AMERICA
OFFICE OF ALIEN PROPERTY CUSTODIAN

Vesting Order Number 4551

Re: Trust Indenture dated the 21st day of March, 1928 between the Chase National Bank of the City of New York and Charles L. Cobb
(File D-28-8087; E. T. Sec. 11214)

740

Under the authority of the Trading with the enemy Act, as amended, and Executive Order No. 9095, as amended, and pursuant to law, the undersigned, after investigation, finding;

That the property described as follows:

All right, title, interest and claim of any kind or character whatsoever of Bruno Reinicke, Jr., Elisabeth Reinicke, Bruno Carl Reinicke, Robert Hans Reinicke, Johanne Maria Margarete Elisabeth Reinicke, child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; Klaus Reinicke, Hans Egon Schwarzburger, Ilse Schwarzburger Roth, Hans Adolf Roth, Heide Roth, Hans Eberhardt Schwarzburger, Karla Maria Rott vom Baur, Fritz vom Baur, Gerd vom Baur, Roland Rott, Rose Lore Rott, Fritz Reinicke, Gertrud Ernst, Ella Schwarzburger, Charlotte Rott, descendants of any de-

741

742 ceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke; issue, names unknown, of Fritz Reinicke; issue, names unknown, of Gertrud Ernst; issue, names unknown, of Ella Schwarzburger; issue, names unknown, of Charlotte Rott; heirs at law, names unknown, of Bruno Reinicke, Jr.; and each of them, in and to the trust established under a certain indenture of trust dated March 21, 1928 between Charles L. Cobb
743 and The Chase National Bank of the City of New York,

is property payable or deliverable to, or claimed by, nationals of a designated enemy country, Germany, namely,

Nationals:	Last Known Address:
Bruno Reinicke, Jr.	Germany
Elisabeth Reinicke	Germany
Bruno Carl Reinicke	Germany
744 Robert Hans Reinicke	Germany
Johanne Maria Margarete Elisabeth Reinicke	Germany
Child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke	Germany
Klaus Reinicke	Germany
Hans Egon Schwarzburger	Germany
Ilse Schwarzburger Roth	Germany
Hans Adolf Roth	Germany

Plaintiff's Exhibit 7

Heide Roth	Germany	745
Hans Eberhardt Schwarzburger	Germany	
Karla Maria Rott vom Baur	Germany	
Fritz vom Baur	Germany	
Gerd vom Baur	Germany	
Roland Rott	Germany	
Rose Lore Rott	Germany	
Fritz Reinicke	Germany	
Gertrud Ernst	Germany	
Ella Schwarzburger	Germany	
Charlotte Rott	Germany	
		746
Descendants of any deceased child or children, names unknown, of Bruno Reinicke, Jr. and Elisabeth Reinicke	Germany	
Issue, names unknown, of Fritz Reinicke	Germany	
Issue, names unknown, of Gertrud Ernst	Germany	
Issue, names unknown, of Ella Schwarzburger	Germany	747
Issue, names unknown, of Charlotte Rott	Germany	
Heirs at law, names unknown, of Bruno Reinicke, Jr.	Germany	

That such property is in the process of administration by The Chase National Bank of the City of New York, as Trustee of the

748 trust established under an indenture of trust dated March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York, acting under the judicial supervision of the Supreme Court of the State of New York, in and for the County of New York;

And determining that to the extent that such nationals are persons not within a designated enemy country, the national interest of the United States requires that such persons be
749 treated as nationals of a designated enemy country, (Germany);

And having made all determinations and taken all action required by law, including appropriate consultation and certification, and deeming it necessary in the national interest,

HEREBY VESTS in the Alien Property Custodian the property described above, to be held, used, administered, liquidated, sold or otherwise dealt
750 with in the interest and for the benefit of the United States.

Such property and any or all of the proceeds thereof shall be held in an appropriate account or accounts, pending further determination of the Alien Property Custodian. This Order shall not be deemed to limit the power of the Alien Property Custodian to return such property or the proceeds thereof in whole or in part, nor shall it be deemed to indicate that compensation will not be paid in lieu thereof, if and when

it should be determined to take any one or all of such actions. 751

Any person, except a national of a designated enemy country, asserting any claim arising as a result of this Order may, within one year from the date hereof, or within such further time as may be allowed, file with the Alien Property Custodian on Form APC-1 a notice of claim, together with a request for a hearing thereon. Nothing herein contained shall be deemed to constitute an admission of the existence, validity or right to allowance of any such claim. 752

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in Section 10 of Executive Order No. 9095, as amended.

Executed at Washington, D. C. on January 29, 1945.

(Signed) JAMES E. MARKHAM
James E. Markham
Alien Property Custodian

(Official Seal)

753

I hereby certify that the within is a true and correct copy of the original paper on file in this office.

JAMES E. MARKHAM
Alien Property Custodian

By: JOHN W. WATSON
Assistant Secretary for Records
Office of Alien Property Custodian

Plaintiff's Exhibit 8

754

Letter of Office of Alien Property to trustee, dated April 15, 1953, identical with Exhibit C, annexed to Complaint, printed herein at pages 57 to 58.

Plaintiff's Exhibit 9

Amendment to Vesting Order 4551, identical with Exhibit B, annexed to Complaint, printed
755 herein at pages 53 to 56.

Plaintiff's Exhibit 10

Transcript of the birth certificate of the defendant Hans Dietrich Schaefer.

(PHOTOPRINT)

756 [*For the Convenience of Court and Counsel This Exhibit (Photostatic Copy) Is Bound in on the Opposite Page.*]

Plaintiff's Exhibit 10

1C

DETROIT DEPARTMENT OF HEALTH

Bureau of Vital Statistics

our Letter Mother 10/13/53

CERTIFICATE OF LIVE BIRTH

MICHIGAN DEPARTMENT OF HEALTH
Vital Records Section

BIRTH No. 121- Local File No. 32422

1. PLACE OF BIRTH a. COUNTY: Wayne	2. USUAL RESIDENCE OF MOTHER (Where live within limits?) a. STATE: Michigan b. COUNTY: Wayne
b. CITY (If outside corporate limits, write RURAL and give township) OR VILLAGE: Detroit	c. (Name of) CITY OR VILLAGE: Detroit d. Is residence within limits of city or incorporated village? Yes ☐ No ☐
e. FULL NAME OF HOSPITAL OR INSTITUTION (If NOT in hospital or institution, give street address or location): Florence Crittenton Hospital	f. STREET ADDRESS: 4222 Clements ZONE 4

3. CHILD'S NAME (Type or print)	a. (First)	b. (Middle)	c. (Last)
	HANS	DIETRICH	SCHAEFER

4. SEX	5. THIS BIRTH	6. IF TWIN OR TRIPLET (This child born)	7. DATE OF BIRTH (Month)	(Day)	(Year)
Male	Single ☒ Twin ☐ Triplet ☐	1st ☐ 2nd ☐ 3rd ☐	August	15	1953

FATHER OF CHILD

8. FULL NAME	a. (First)	b. (Middle)	c. (Last)	9. COLOR OR RACE
	Claus	F.	Schaefer	White

10. AGE (At time of this birth)	11. BIRTHPLACE (State or foreign country)	12. USUAL OCCUPATION	13. KIND OF BUSINESS OR INDUSTRY
30 YEARS	Germany	Sheet Metal Worker	Linden Fabricators, Inc.

MOTHER OF CHILD

14. FULL MAIDEN NAME	a. (First)	b. (Middle)	c. (Last)	15. COLOR OR RACE
	Johanna	MARIA	Reinicke	White

16. AGE (At time of this birth)	17. BIRTHPLACE (State or foreign country)	b. Now living (Others alive now born of this marriage)	b. Now dead (Others born of this marriage but now dead)	c. Total number children born (Including this child)
24 YEARS	Germany	0	0	0

18. MAILING ADDRESS: Mrs. Johanna Maria Schaefer

24 YEARS	Germany	0	0	0

Mrs. Johanna Maria Schaefer

19. I hereby certify that I attended the birth of this child who was born alive at the time and on the date stated above.	J. Allen Hynek M.D.	20. ATTENDANT BY BIRTH: M.D. ☒ D.O. ☐ Midwife ☐ Other (Specify)
	Irene Kuntz	August 15, 1953
	AUG 27 1953	Joseph C. Hinchey M.D.

I, hereby, certify that the foregoing is a true copy of the record on file in the Detroit Department of Health.

Dated OCT 15 1953

Director, Bureau Vital Statistics

760

Plaintiff's Exhibit 11

ACCOUNT OF PROCEEDINGS

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles
761 L. Cobb and The Chase National Bank of the City of New York,

Plaintiff,

—against—

BRUNO REINICKE, et al.,

Defendants.

The Chase National Bank of the City of New York does hereby render the following account
762 of its proceedings as Trustee as aforesaid for the period from October 19, 1944 to May 8, 1953.

Schedule A, hereto annexed, contains a statement of all property constituting the corpus of the trust estate on October 19, 1944, date of the last accounting.

Schedule A-1, hereto annexed, contains a statement of all additional property received constituting corpus of the trust estate.

Schedule B, hereto annexed, contains a statement showing all sales and changes in property received by the accountant, purchases, and any

and all increases or decreases in the value thereof. 763

Schedule C, hereto annexed, contains a statement of all payments made by the accountant for necessary expenses incurred in the administration of the trust chargeable against principal.

Schedule D, hereto annexed, contains a statement of cash transferred from principal to income account.

Schedule E, hereto annexed, contains a statement of all property constituting the corpus of the trust estate on May 8, 1953, date of this accounting. 764

Schedule F, hereto annexed, contains a statement of all income collected by the accountant from October 19, 1944 to May 9, 1953 with the exception of income from real estate.

Schedule F-1, hereto annexed, contains a statement of all income received in connection with real property constituting corpus of the trust.

Schedule G, hereto annexed, contains a statement of all payments made by the accountant for necessary expenses incurred in the administration of the trust chargeable against income. 765

Schedule G-1, hereto annexed, contains a statement of all payments made from income in connection with interest on real property constituting corpus of the trust estate.

Schedule H, hereto annexed, contains a statement of amount of accrued interest advanced on purchases of securities to be subsequently refunded on next interest date.

Schedule I, hereto annexed, contains a state-

766 ment of investments made by the accountant out of income showing disposition of same and any and all increases or decreases in value thereof.

Schedule J, hereto annexed, contains a statement of funds transferred from income to corpus of trust.

Schedule K, hereto annexed, contains a statement showing the computation of principal commissions due the accountant upon this accounting.

The following is a Summary Statement of the
767 said account:

AS TO PRINCIPAL

CHARGES

Amount of all property on hand October 19, 1944, date of our last account as set forth in Schedule "A"	$617,470.65	
Amount of all additional property received as set forth in
768 Schedule "A-1"	116,576.75	
Amount of all increases on the sale or disposition of property as set forth in Schedule "B"	1,994.47	$736,041.87

CREDITS

Amount of all decreases on the sale or disposition of property as set forth in Schedule "B"	$ 35,100.45	

Plaintiff's Exhibit 11

Amount of all payments made for administration expenses as set forth in Schedule "C"	$ 13,795.64		769
Amount of all funds transferred to income as set forth in Schedule "D"	5,311.24	$ 54,207.33	
Leaving a balance of consisting of property, as set forth in Schedule "E"		$681,834.54	
As to Income			770
Charges			
Amount of all income on hand October 19, 1944, date of our last account	$ 21,478.58		
Amount of funds transferred from principal	5,311.24		
Amount of all income collected as set forth in Schedule "F" (Personal Property)	131,074.12		771
Amount of all income collected as set forth in Schedule "F-1" (Real Property)	3,034.15	$160,898.09	
Credits			
Amount of losses upon sale of assets constituting invested income as set forth in Schedule "I"	$ 20.52		

Plaintiff's Exhibit 11

772	Amount of all payments made for administration expenses as set forth in Schedule "G" (Personal Property)	$ 42,346.79	
	Amount of all payments made for administration expenses as set forth in Schedule "G-1" (Real Property)	1,501.29	
773	Amount of all funds transferred to principal as set forth in Schedule "J"	116,576.75	
	Amount of accrued interest on purchase of securities to be subsequently refunded upon next interest date as set forth in Schedule "H"	62.36	$160,507.71
	Leaving an income cash balance of		$ 390.38

774

The foregoing principal balance of $681,834.54 consists of cash in the sum of $2,202.37 and other property on hand on May 8, 1953 having an inventory value of $679,632.17.

The said principal balance represents the inventory value of the cash and securities on hand in the principal account on May 8, 1953 and does not represent the market or actual value of the property held by the trustee or a sum of money or its equivalent for which the trustee is chargeable and is subject to trustee's commissions, legal fees and expenses of this accounting.

Plaintiff's Exhibit 11

The foregoing income balance of $390.38 consists entirely of cash and is subject to trustee's commissions and expenses of this accounting. 775

The said schedules, which are annexed hereto, are a part of this account.

Dated: May 8, 1953.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: 776
Personal Trust Officer

Trustee.

SCHEDULE A

A statement of all property constituting the corpus of the trust estate on October 19, 1944, date of the last accounting.

	Inventory Value
	777
Property and cash as described in Schedule B of account dated October 19, 1944	$617,470.65

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

778

SCHEDULE A-1

A statement of all additional property received constituting corpus of the trust estate.

1950			
Dec.	14	Cash transferred from income account	$ 2,245.04
	27	"	5,000.00
1951			
Jan.	2	Received $78,000.00 United States of America Treasury Series "E" 1¼% due August 1, 1951 transferred from income account	77,950.28
Mar.	2	Cash transferred from income account	1,966.18
May	2	"	847.10
July	2	"	3,301.55
Sept.	4	"	1,604.15
Nov.	1	"	2,765.88
1952			
Jan.	2	"	6,740.68
Mar.	3	"	987.02
July	2	"	1,594.66
Aug.	7	"	108.48
Sept.	3	"	803.00
Nov.	3	"	3,363.81
1953			
Jan.	2	"	5,607.65
Mar.	12	"	1,691.27
			$116,576.75

779

780

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

SCHEDULE B

781

A statement showing all sales and changes in property received by the accountant, purchases, and any and all increases or decreases in the value thereof.

		Inventory	Proceeds or Still Held	Increase	Decrease
1951					
Mar. 1	Purchased $4,000 United States of America Treasury 2½% due June 15, 1972 at 100 22/32 net	$ 4,027.50			
	$4,000 Still Held		$ 4,027.50		
1951					782
Jan. 3	Purchased $10,000 United States of America Treasury 2¼% due December 15, 1962 at 100 20/32 net	10,062.50			
	$10,000 Still Held		10,062.50		
1949					
Mar. 24	Purchased $10,000 United States of America Treasury Notes Series "A" 1⅜% due April 1, 1950 at 100.146627 net	10,014.66			783
1950					
Mar. 21	Sold $10,000 above at 100 5/32 net		10,015.63	$ .97	
1950					
Mar. 21	Purchased $10,000 United States of America Certificate of Indebtedness 1⅛% due January 1, 1951 at 99.978411 net	9,997.84			
1951					
Jan. 2	Redeemed $10,000 above at 100 net		10,000.00	2.16	

Plaintiff's Exhibit 11

784 SCHEDULE B (Continued)

		Inventory	Proceeds or Still Held	Increase	Decrease
	$78,000 United States of America Treasury Notes Series "E" 1¼% due August 1, 1951	$ 77,950.28			
1951					
Mar. 15	Purchased $6,000 above at 99.927056	5,995.62			
Aug. 1	Redeemed $34,000 above at 100		$ 34,000.00	$ 21.90	
785 1	$50,000 tendered in payment of $50,000 United States of America Treasury Certificate of Indebtedness 1⅞% due July 1, 1952 "B" (disposition see below)		50,000.00	32.20	
786	$50,000 United States of America Treasury Certificate of Indebtedness Series "B" 1⅞% due July 1, 1952	50,000.00			
1952					
Apr. 18	$4,000 above sold at 100.089103 net		4,003.56	3.56	
July 12	$46,000 above redeemed at 100		46,000.00		
1952					
July 7	Purchased $32,000 United States of America Treasury Certificate of Indebtedness Series "B" 1⅞% due June 1, 1953 at 100.030530 net	32,009.77			
	$32,000 Still Held		32,009.77		

Plaintiff's Exhibit 11

787

SCHEDULE B (Continued)

		Inventory	Proceeds or Still Held	Increase	Decrease
1953					
Mar. 4	Purchased $10,000 Cleveland Electric Illuminating Co. 1st mortgage 3% due July 1, 1970 at 99¾ net	$ 9,975.00			
	$10,000 Still Held		$ 9,975.00		
1951					
Nov. 8	Purchased $2,000 The Detroit Edison Co. general and refunding mortgage Series "H" 3% due December 1, 1970 at 99⅞ net	1,997.50			
1952					
July 24	Purchased $2,000 above at 100½ plus commission	2,015.00			
24	Purchased $6,000 above at 100¾ net	6,045.00			
	$10,000 Still Held		10,057.50		
1952					
Nov. 18	Purchased $3,000 Commonwealth Edison Co. 1st mortgage 3% due February 1, 1977 at 99⅝ net	2,988.75			
	$3,000 Still Held		2,988.75		
1951					
Aug. 24	Purchased $10,000 Pacific Gas & Electric Co. 1st and refunding Series "L" 3% due June 1, 1974 at 101 net	10,100.00			
	$10,000 Still Held		10,100.00		

Plaintiff's Exhibit 11

790

SCHEDULE B (Continued)

		Inventory	Proceeds or Still Held	Increase	Decrease
1951					
Aug. 20	Purchased $10,000 Consumers Power Co. 1st mortgage 2⅞% due September 1, 1975 at 98¾ net	$ 9,875.00			
	$10,000 Still Held		$ 9,875.00		
1952					
Jan. 14	Purchased $1,000				
791	Consolidated Edison Co. of New York Inc. 1st and refunding mortgage 3% due November 1, 1972 at 99⅛ plus commission	993.75			
22	Purchased $2,000 above at 100 net	2,000.00			
25	Purchased $4,000 above at 100½ net	4,020.00			
Mar. 10	Purchased $1,000 above at 99½ net	995.00			
July 24	Purchased $2,000 above at 100½ net	2,010.00			
	$10,000 Still Held		10,018.75		
792					
	Interest in Lots #9 and 10 in Block #2, Dinzee & McDaniels re subdivision of Blocks #3, 6, 9, 10 and south ½ block #8 in Wilmette Village (703 Park Ave.) Cook County, Illinois, legal title to which is held by the Chicago Title & Trust Co., Chicago, Ill. as Trustee	16,000.00			

Plaintiff's Exhibit 11

SCHEDULE B (Continued)

793

		Inventory	Proceeds or Still Held	Increase	Decrease
1948					
Aug. 17	Above property sold for $9,700 all cash Cash $9,700.00 Less: legal fees $152.80 misc. expenses 17.25 170.05		$ 9,529.95		$ 6,470.05
					794
	16⅔ shs. First National Bank of Chicago, Ill. capital stock and 10 shs. Middle West Corporation capital stock	$ 6,156.60			
1944					
Oct. 20	Inventory value of 10 shs. of Middle West Corporation capital stock when received September 3, 1940 (see account separately stated)		57.50		
					795
1945					
Oct. 20	Sold ⅔ sh. First National Bank capital stock at $354 net		236.00		7.98
Dec. 28	Received 3 1/5 shs. First National Bank capital stock as a 20% stock dividend				
1946					
Mar. 7	Sold 1/5 sh. capital stock at 51 net per 1/5 share		51.00		9.99

Plaintiff's Exhibit 11

796

SCHEDULE B (Continued)

		Inventory	Proceeds or Still Held	Increase	Decrease
1948					
Dec. 27	Received 4¾ shs. capital stock as a 25% stock dividend				
1949					
May 25	Sold ¾ sh. at 44 per ¼ sh. net		$ 132.00		$ 50.97
1951					
Dec. 26	Received 4 3/5 shs. capital stock as a 20% stock dividend				
797 1952					
Mar. 18	Sold 3/5 sh. at $43 per 1/5 net		129.00	$ 7.02	
	27 shs. Still Held		5,489.18		
	13 shs. Chicago Corp. common stock and 24 shs. Continental Illinois National Bank & Trust Co. common stock	$ 6,292.92			
1944					
798 Oct. 20	Inventory value of 13 shs. Chicago Corp. common stock when received March 24, 1934 (see account separately stated)		32.50		
1952					
Feb. 29	Received 6 shs. Continental Illinois National Bank & Trust Co. common stock as a 25% stock dividend				
	30 shs. Still Held		6,260.42		

Plaintiff's Exhibit 11

SCHEDULE B (Continued) 799

		Inventory	Proceeds or Still Held	Increase	Decrease
	13 shs. Chicago Corp. common	$ 32.50			
1950					
Dec. 28	Sold 13 shs. at 12⅞ less commission and tax		$ 160.93	$ 128.43	
	100 shs. The Texas Co. capital stock	4,612.76			
1947					
Sept. 27	Received 100 rts. to subscribe to capital stock				800
Oct. 6	Sold above rts. at 2⅛ less tax		212.25		
1948					
Nov. 15	Received 2½ shs. resulting from a 2½% stock dividend				
1949					
Oct. 4	Sold ½ sh. at 59½ net		29.75	8.28	
1951					
June 12	Received 102 shs. resulting from a 2 for 1 stock split-up				801
	204 shs. Still Held		4,379.04		
	200 shs. Liggett & Myers Co. common stock	18,895.00			
1949					
Apr. 15	Received 200 rts. to subscribe to common stock				
19	Sold above rts. at 5 15/16 less tax		1,186.85		
	200 shs. Still Held		17,708.15		

Plaintiff's Exhibit 11

SCHEDULE B (Continued)

			Inventory	Proceeds or Still Held	Increase	Decrease
	1952					
	July 1	Purchased 100 shs. Safeway Stores Inc. 4½% cumulative convertible preferred stock at 100 net	$ 10,000.00			
	1953					
	Mar. 2	Sold above shs. at 104½ less tax and commission		$ 10,403.34	$ 403.34	
803	1951					
	Aug. 16	Purchased $10,000 American Telephone & Telegraph Co. 2¾% debenture due February 1, 1971 at 96⅞ net	9,687.50			
		$10,000 Still Held		9,687.50		
		245 shs. National Lead Co. common stock $10 par	3,777.78			
	1948					
804	Dec. 22	Received 12¼ shs. resulting from a 5% stock dividend				
	1949					
	Oct. 4	Sold ¼ sh. at 32¼ net		8.06		4.39
	1951					
	Nov. 9	Above 257 shs. exchanged for 771 shs. $5. par stock on 3 for 1 basis				
		771 shs. Still Held		3,774.11		

Plaintiff's Exhibit 11

SCHEDULE B (Continued)

		Inventory	Proceeds or Still Held	Increase	Decrease	
1952						
July 25	Purchased 100 shs. common stock Hiram Walker-Gooderham & Worts Ltd. at 48¼ plus commission	$ 4,855.83				805
25	Purchased 100 shs. above at 48½ plus commission	4,880.85				
	200 shs. Still Held		$ 9,736.68			806
	100 shs. United States Steel Corp. common stock	15,525.00				
1949						
June 3	Received 200 shs. additional resulting from 3 for 1 stock split-up					
1951						
Mar. 1	Sold 100 shs. at 44⅜ less tax and commission		4,396.97		$ 778.03	
	200 shs. Still Held		10,350.00			807
	22 shs. Electric Storage Battery Co. common stock	1,539.72				
1950						
Dec. 26	Sold above shs. at 39⅜ less tax and commission		853.03		686.69	

Plaintiff's Exhibit 11

808

SCHEDULE B (Continued)

		Inventory	Proceeds or Still Held	Increase	Decrease
	100 shs. Proctor & Gamble Co. common	$ 5,730.50			
1950					
Mar. 24	Received 50 shs. resulting from 1½ for 1 stock split-up 150 shs. Still Held		$ 5,730.50		
809	4,250 shs. Standard Brands Inc. common	476,052.91			
1950					
Dec. 27	Sold 300 shs. at 22 less tax and commission		6,506.86		$27,096.74
	3,950 shs. Still Held		442,449.31		
	200 shs. Union Carbide & Carbon Corporation capital	8,655.00			
1948					
May 19	Received 400 additional shs. resulting from the 3 for 1 stock split-up 600 shs. Still Held		8,655.00		
810	10 shs. capital stock Middle West Corporation	57.50			
1947					
July 17	Received as a distribution 10 shs. Central and South West Corporation common stock on share for share basis		97.50		

Plaintiff's Exhibit 11

SCHEDULE B (Continued) 811

		Inventory	Proceeds or Still Held	Increase	Decrease	
1948						
Feb. 27	Received as a distribution 5 shs. common stock of Central Illinois Public Service Co. basis 1 sh. for each 2 shs. held		$ 60.00			
Dec. 1	Received as a distribution 1⅓ shs. Public Service Co. of Indiana common stock		27.17			812
	2½ shs. Wisconsin Power & Light Co. common stock basis of ¼ sh. Wisconsin Power and 2/15 sh. Public Service Co. for each sh. of Middle West held		31.88			
1949						
Jan. 31	Received as a distribution 5 shs. common stock Kentucky Utilities Co. basis 1 sh. for each 2 shs. held		53.13			813
1950						
Aug. 24	Above 10 shs. capital stock of Middle West Corporation surrendered for initial cash distribution of $25.		25.00			

Plaintiff's Exhibit 11

814 SCHEDULE B (Continued)

		Inventory	Proceeds or Still Held	Increase	Decrease
1953					
Mar. 24	Received second liquidating payment of $.74 per share		$ 7.40	$ 244.58	
	10 shs. Central and South West Corporation common stock	$ 97.50			
815 1948					
Nov. 23	Received 10 rts. to purchase common stock				
Dec. 2	Sold above 10 rts. less tax and commission		.02		
1949					
Nov. 9	Received 10 rts. to purchase common stock				
15	Sold above 10 rts. less commission and tax		.03		
1950					
816 Dec. 22	Sold 10 shs. at 12⅝ less tax and commission		119.89	22.44	
	1⅓ shs. Public Service Co. of Indiana common	27.17			
1949					
Mar. 11	Received 3/100 sh. Indiana Gas & Water Co. as 3% stock dividend		.46		
Oct. 4	Sold ⅓ sh. at 24½ net		8.16	1.48	
11	Sold 1 sh. at 25¾ less tax		25.65	5.62	

Plaintiff's Exhibit 11

SCHEDULE B (Continued) 817

		Inventory	Proceeds or Still Held	Increase	Decrease	
	3/100 sh. Indiana Gas & Water Co. common	$ .46				
1949						
Oct. 4	Sold 3/100 sh. at 16⅝ net		$ .50	$ .04		
	2½ shs. Wisconsin Power & Light Co. common stock	31.88				818
1949						
Oct. 10	Sold 2 shs. at 15⅛ net		30.25	4.75		
11	Sold ½ sh. at 14¼ net		7.13	.75		
	5 shs. Kentucky Utilities Co. common stock	53.13				
1949						
Oct. 31	Received 5 rts. to subscribe to common stock					
Nov. 7	Sold above rts. at $.24 net		1.20			819
1951						
Jan. 3	Sold 5 shs. at 13⅜ less tax		66.68	14.75		
	5 shs. common stock Central Illinois Public Service Co.	60.00				
1949						
June 14	Received 5 rts. to purchase common stock					
22	Sold above rts.		.01			
1951						
Jan. 3	Sold 5 shs. at 15¼ less tax		76.05	16.06		

Plaintiff's Exhibit 11

SCHEDULE B (Continued)

823

		Inventory	Proceeds or Still Held	Increase	Decrease
1949 July 5	Above shares exchanged for 400 shs. $5. par common stock 400 shs. Still Held		$ 14,677.00		
		$894,033.58	$860,927.60	$1,994.47	$35,100.45

824

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer.

Trustee.

825

Plaintiff's Exhibit 11

820 SCHEDULE B (Continued)

		Inventory	Proceeds or Still Held	Increase	Decrease
1951					
July 9	Purchased $4,000 American Tobacco Co. debentures 3% due April 15, 1962 at 100⅛ net	$ 4,005.00			
Aug. 20	Purchased $4,000 above at 101 net	4,040.00			
Sept. 10	Purchased $2,000 above at 101¾ net	2,035.00			
	$10,000 Still Held		$ 10,080.00		
821					
	100 shs. Allied Chemical & Dye Corporation common stock	15,178.00			
1950					
Sept. 5	Received 300 shs. additional issued in connection with 4 for 1 split up 400 shs. Still Held		15,178.00		
822	200 shs. Anaconda Copper Mining Co. capital stock	8,002.90			
1952					
July 25	Sold above shares at 45¾ less tax and commission		9,074.65		$1,071.75
	100 shs. E. I. du Pont de Nemours & Co. Inc. common stock $20. par	14,677.00			

Plaintiff's Exhibit 11

826

SCHEDULE C

A statement of all payments made by the accountant for necessary expenses incurred in the administration of the trust chargeable against principal.

1945			
Mar. 26	Check to Chicago Title & Trust Co. fee for holding title for year		
827	ending March 21, 1946	$	6.25
1946			
Mar. 4	Shipping expense on First National Bank of Chicago, Illinois common stock		.30
1947			
June 26	Cost of photostats of letters of instructions as to income re Account of Proceedings		.31
July 18	Cost of photostat of letter		
828	of instructions		.25
18	Cost of photostat of letter		.25
1948			
Mar. 15	Full payment 1947 Federal Income tax		5.66
1949			
May 25	Shipping expense on 75 cts fractional share warrant for First National Bank of Chi-		

Plaintiff's Exhibit 11

SCHEDULE C (Continued)

				829
1949				
Oct. 4	Shipping expense on Wisconsin Power & Light Co. common	$	.32	
1950				
Aug. 8	Shipping expense on Middle West Corp. capital		.21	
Oct. 2	Cost of photostat of 90-day letters		.49	830
Dec. 20	Shipping expense on Central Illinois Public Service Co.		.52	
21	Shipping expense on First National Bank of Chicago, Illinois		.56	
21	Shipping expense on Continental Illinois National Bank & Trust Co.		.41	
29	Cost of photostat		4.29	831
29	Check to Milbank, Tweed, Hope & Hadley in payment of costs incurred in the matter of The Chase National Bank of the City of New York as Trustee vs Bruno Reinicke Jr. et al		190.71	

Plaintiff's Exhibit 11

832 SCHEDULE C (Continued)

1950			
	29	Check to Jeremiah P. Lyons for services as Guardian ad litem as allowed by Order Supreme Court, New York, dated July 13, 1950	$5,000.00
833	29	Check to Thomas A. Ryan for services rendered and pursuant to Order Supreme Court, New York, dated July 13, 1950	5,000.00
	29	Check to Milbank, Tweed, Hope & Hadley for services rendered and pursuant to Order Supreme Court, New York, dated July 13, 1950	2,500.00
834	29	Check to Jeremiah P. Lyons in payment of disbursements as Guardian ad litem in the matter of The Chase National Bank of the City of New York as Trustee vs Bruno Reinicke Jr. et al	51.61
1951			
Jan.	31	Cost of photostat of Agreement	4.29

Plaintiff's Exhibit 11

SCHEDULE C (Continued) 835

1952			
Jan. 30	Cost of photostat of letter	$ .58	
30	Cost of photostat of Agreement	3.09	
June 30	Cost of photostat of legal opinion	.58	
1953			
Apr. 13	Payment of 1952 Federal Income tax	774.62	836
May 8	The Chase National Bank of the City of New York expenses in preparation of schedules of accounting to May 8, 1953	250.00	
		$13,795.64	

837

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

838 SCHEDULE D

A statement of cash transferred from principal to income account.

1953			
Apr. 15	To cover part of 1952 Federal Income tax		$4,739.90
May 4	To provide funds for payment of trustee's commission on income (See Schedule		
839	"G")		571.34
			$5,311.24

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

840 Trustee.

Plaintiff's Exhibit 11

841

SCHEDULE E

A statement of all property constituting the corpus of the trust estate on May 8, 1953, date of this accounting.

		Inventory Value	Market Value as of May 8, 1953.
$32,000.00	United States of America Treasury Certificate of Indebtedness 1⅞% due June 1953	$ 32,009.77	$ 32,001.60
$10,000.00	United States of America Treasury Bonds dated November 15, 1945 2¼% due December 1962	10,062.50	9,412.50
$ 4,000.00	United States of America Treasury Bonds dated June 1, 1945 2½% due June 1972	4,027.50	3,670.00
	Public Utility Bonds		
$10,000.00	American Telephone & Telegraph Company debentures 2¾% due February 1971	9,687.50	9,025.00
$10,000.00	Cleveland Electric Illuminating Company 1st mortgage 3% due July 1970	9,975.00	9,575.00
$ 3,000.00	Commonwealth Edison Company 1st mortgage Series "L" 3% due February 1977	2,988.75	2,831.25
$10,000.00	Consolidated Edison Company New York 1st and refunding Series "D" 3% due November 1972	10,018.75	9,412.50
$10,000.00	Consumers Power Company 1st mortgage 2⅞% due September 1975	9,875.00	9,087.50
$10,000.00	Detroit Edison Company general and refunding mortgage Series "H" 3% due December 1970	10,057.50	9,412.50

842

843

Plaintiff's Exhibit 11

844 SCHEDULE E (Continued)

		Inventory Value	Market Value as of May 8, 1953.
$10,000.00	Pacific Gas & Electric 1st and refunding Series "L" 3% due June 1974	$ 10,100.00	$ 9,162.50
	Industrial Bonds		
$10,000.00	American Tobacco Co. debentures 3% due April 1962	10,080.00	9,975.00
	Railroad Stocks		
845 Shares			
100	Great Northern Railway non cumulative preferred $6.	7,275.01	5,400.00
	Industrial Stocks		
400	Allied Chemical & Dye Corp. common	15,178.00	27,950.00
103	Borden Company capital $15. par value	7,117.50	5,652.13
400	E. I. du Pont de Nemours & Co. common $5. par value	14,677.00	38,150.00
20	George M. Forman & Co. 7% preferred Series "A" $100. par value	1,970.00	0.00
846			
200	Liggett & Myers Tobacco Co. common $25. par value	17,708.15	15,500.00
771	National Lead Co. common $5. par value	3,774.11	24,864.75
150	Procter & Gamble Co. common	5,730.50	9,506.25
3,950	Standard Brands Inc. common	442,449.31	112,081.25

Plaintiff's Exhibit 11

EXHIBIT E (Continued) 847

Shares		Inventory Value	Market Value as of May 8, 1953.
204	Texas Company capital $25. par value	$ 4,379.04	$ 11,194.50
600	Union Carbide & Carbon Corp. capital	8,655.00	39,750.00
200	United States Steel Corp. common	10,350.00	7,825.00
200	Hiram Walker Gooderham & Worts common	9,736.68	9,150.00
			848
	Real Estate Stocks		
2	Michigan Avenue & Eighth Street Trust	0.00	0.00
	Bank & Finance Stocks		
30	Continental Illinois National Bank & Trust Company $33.33 par value	6,260.42	2,625.00
27	First National Bank Chicago, Illinois common $100. par value	5,489.18	6,709.50
	Cash on hand May 8, 1953	2,202.37	2,202.37
			849
		$681,834.54	$432,126.10

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

850

SCHEDULE F

A statement of all income collected by the accountant from October 19, 1944 to May 9, 1953 with the exception of income from real estate.

	United States of America Treasury Certificate of Indebtedness Series "H" 1⅛% due September 1950			
1950				
Sept. 1	**Int. to September 1, 1950 on sale of $71,000**		**$733.10**	
	Less:			
851	**Accrued int. from October 1, 1949 to December 29, 1949 on purchase of $67,000**	**$183.79**		
	Accrued int. from March 1, 1950 to May 26, 1950 on purchase of $4,000	**29.22**	**213.01**	**$ 520.09**
	United States of America Treasury bonds dated June 1, 1945 2½% due September 1972			
1951				
June 15	**6 mos. int. on $4,000**	**$ 50.00**		
	Less:			
852	**Accrued int. from December 15, 1950 to March 1, 1951 on purchase**	**20.88**	**$ 29.12**	
Dec. 17	**6 mos. int. on $4,000**		**50.00**	
1952				
June 16	**"**		**50.00**	
Dec. 15	**"**		**50.00**	**179.12**

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

	United States of America Treasury bonds dated November 15, 1945 2¼% due September 1962			
1951				
June 15	6 mos. int. on $10,000	$112.50		
	Less:			
	Accrued int. from December 15, 1950 to January 3, 1951 on purchase	11.74	$ 100.76	
Dec. 17	6 mos. int. on $10,000		112.50	
1952				
June 16	"		112.50	
Dec. 15	"		112.50	$ 438.26
	United States of America Treasury Notes Series "A" dated September 15, 1948 1⅜ due September 1950			
1949				
Apr. 1	Int. on $10,000	$ 74.76		
	Less:			
	Accrued int. from October 1, 1948 to March 24, 1949 on purchase	71.74	$ 3.02	
Oct. 3	6 mos. int. on $10,000		68.75	
1950				
Mar. 21	Accrued int. to March 21, 1950 on sale of $10,000		64.59	136.36
	United States of America Certificate of Indebtedness Series "A" 1⅛% due September 1951			
1951				
Jan. 2	Int. on $10,000		$ 112.50	
	Less:			
	Accrued int. to March 21 on purchase		24.35	88.15

Plaintiff's Exhibit 11

856

SCHEDULE F (Continued)

	United States of America Treasury Notes Series "E" dated July 1, 1950 1¼% due 1951			
1951				
Aug. 1	Int. on $84,000		$1,139.17	
	Less:			
	Accrued int. from August 1, 1950 to September 1, 1950 on purchase of $71,000	$150.75		
	Accrued int. from August 1, 1950 to November 8, 1950 on purchase of $7,000	31.16		
857	Accrued int. from August 1, 1950 to March 15, 1951 on purchase of $6,000	52.81	234.72	$ 904.45
	United States of America Treasury Certificate of Indebtedness Series "B" 1⅞% due 1952			
1952				
Apr. 18	Accrued int. to April 17 on sale of $4,000		$ 53.28	
July 1	Int. on $46,000		789.44	842.72
858	**Great Northern Railway Co. non-cumulative preferred**			
1944				
Dec. 16	Div. on 100 shs. at $1.00		$ 100.00	
1945				
June 21	" $1.50		150.00	
Dec. 10	"		150.00	
1946				
June 21	"		150.00	
Dec. 9	"		150.00	
1947				
June 20	"		150.00	

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

859

	Great Northern Railway (Continued)			
1948				
June 21	Div. on 100 shs. at $1.50		$ 150.00	
Dec. 10	" $2.00		200.00	
1949				
Mar. 21	" $1.00		100.00	
June 21	"		100.00	
Sept. 21	"		100.00	
Dec. 21	"		100.00	
1950				
Mar. 21	"		100.00	860
June 21	" $ .75		75.00	
Sept. 21	"		75.00	
Dec. 21	" $1.00		100.00	
1951				
Mar. 21	"		100.00	
June 21	"		100.00	
Sept. 25	"		100.00	
Dec. 21	"		100.00	
1952				
Mar. 20	"		100.00	
June 20	"		100.00	
Sept. 22	"		100.00	
Dec. 22	"		100.00	
1953				861
Mar. 18	"		100.00	$ 3,000.00
	Detroit Edison Company general and refunding mortgage Series "H" 3% due 1970			
1951				
Dec. 3	6 mos. int. on $2,000	$ 30.00		
	Less:			
	Accrued int. from June 1 to November 8 on purchase	26.17	$ 3.83	

Plaintiff's Exhibit 11

862 SCHEDULE F (Continued)

	Detroit Edison Company (Continued)				
1952					
June 2	6 mos. int. on $2,000			$ 30.00	
Dec. 1	6 mos. int. on $10,000		$150.00		
	Less:				
	Accrued int. from June 1 to July 24 on purchase of $2,000	$ 8.83			
	Accrued int. from June 1 to July 24 on purchase of $6,000	26.50	35.33	114.67	$ 148.50
863	Commonwealth Edison Company 1st mortgage Series "L" 3% due 1977				
1953					
Feb. 2	6 mos. int. on $3,000			$ 45.00	
	Less:				
	Accrued int. from August 1, 1952 to November 18, 1952 on purchase			26.75	18.25
	Pacific Gas and Electric Co. 1st and refunding Series "L" 3% due 1974				
864 1951					
Dec. 3	6 mos. int. on $10,000		$150.00		
	Less:				
	Accrued int. from June 1 to August 24 on purchase		69.17	$ 80.83	
1952					
June 2	6 mos. int. on $10,000			150.00	
Dec. 1	"			150.00	380.83

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

	Consumers Power Co. 1st mortgage 2⅞% due 1975				
1951					
Sept. 4	6 mos. int. on $10,000	$143.70			
	Less:				
	Accrued int. from March 1 to August 20 on purchase	134.97	$ 8.73		
1952					
Mar. 3	6 mos. int. on $10,000		148.80		
Sept. 2	"		143.70		
1953					
Mar. 2	"		143.80	$ 440.03	
	Consolidated Edison Co. N. Y. 1st and refunding Series "D" 3% due 1972				
1952					
May 1	6 mos. int. on $7,000	$105.00			
	6 mos. int. on $1,000	15.00	$120.00		
	Less:				
	Accrued int. from November 1, 1951 to January 14, 1952 on purchase of $1,000	$ 6.08			
	Accrued int. from November 1, 1951 to January 22, 1952 on purchase of $2,000	13.50			
	Accrued int. from November 1, 1951 to January 25, 1952 on purchase of $4,000	28.00			
	Accrued int. from November 1, 1951 to March 10, 1952 on purchase of $1,000	10.75	58.33	$ 61.67	

865

866

867

Plaintiff's Exhibit 11

868 SCHEDULE F (Continued)

	Consolidated Edison Co. N. Y. (Continued)			
1952				
Nov. 3	6 mos. int. on $10,000	$150.00		
	Less:			
	Accrued int. from May 1, 1952 to July 24, 1952 on purchase of $2,000	13.83	$ 136.17	
1953				
May 1	6 mos. int. on $10,000		150.00	$ 347.84
869				
	American Telephone and Telegraph Co. debenture 2¾% due 1971			
1952				
Feb. 1	6 mos. int. on $10,000	$137.50		
	Less:			
	Accrued int. from August 1, 1951 to August 16, 1951 on purchase	14.51	$ 122.99	
Aug. 1	6 mos. int. on $10,000		137.50	
1953				
870 Feb. 2	"		137.50	397.99
	Middle West Corporation capital			
1944				
Dec. 23	Div. on 10 shs. at $2.30		$ 23.00	
1945				
June 20	Div. on 10 shs. at $.25		2.50	
1946				
Jan. 2	"		2.50	
July 1	"		2.50	
1947				
Jan. 2	"		2.50	33.00

Plaintiff's Exhibit 11

SCHEDULE F (Continued) 871

	Public Service Co. Indiana Inc. common			
1949				
June 1	Div. on 1 sh. at $.40	$ .40		
Sept. 1	"	.40	$ .80	
	Central and Southwest Corp. common			
1947				
Sept. 2	Div. on 10 shs. at $.35	$ 3.50		
1948				872
Mar. 1	"	3.50		
Aug. 31	Div. on 10 shs. at $.20	2.00		
Nov. 30	"	2.00		
1949				
Feb. 28	"	2.00		
May 31	"	2.00		
Aug. 31	"	2.00		
Nov. 30	Div. on 10 shs. at $.22½	2.25		
1950				
Feb. 28	"	2.25		
May 31	"	2.25		
Aug. 31	"	2.25		
Nov. 30	"	2.25	28.25	
				873
	Central Illinois Public Service Co. common			
1948				
Mar. 22	Div. on 5 shs. at $.25	$ 1.25		
June 1	"	1.25		
Aug. 31	"	1.25		
Nov. 30	Div. on 5 shs. at $.30	1.50		
1949				
Feb. 28	"	1.50		
May 31	"	1.50		
Aug. 31	"	1.50		
Nov. 30	"	1.50		
1950				
Feb. 28	"	1.50		
May 31	"	1.50		
Aug. 31	"	1.50		
Nov. 30	"	1.50	17.25	

Plaintiff's Exhibit 11

874

SCHEDULE F (Continued)

	Wisconsin Power and Light Co. common			
	1949			
Feb. 17	**Div. on 2 shs. at $.28**	**$ .56**	**$ .54**	
	Less Wisconsin tax	**.02**		
May 17	**Div. on 2 shs. at $.28**	**$ .56**		
	Less Wisconsin tax	**.02**	**.54**	
Aug. 16	**Div. on 2 shs. at $.28**	**$ .56**		
	Less Wisconsin tax	**.02**	**.54**	**$ 1.62**

875

	Kentucky Utilities Co. common			
	1949			
Mar. 15	**Div. on 5 shs. at $.20**		**$ 1.00**	
June 15	**"**		**1.00**	
Sept. 15	**"**		**1.00**	
Dec. 15	**"**		**1.00**	
	1950			
Mar. 15	**"**		**1.00**	
June 15	**"**		**1.00**	
Sept. 15	**"**		**1.00**	
Dec. 15	**Div. on 5 shs. at $.25**		**1.25**	**8.25**

876

	American Tobacco Company debenture 3% due 1962			
	1951			
Oct. 15	**6 mos. int. on $6,000**	**$ 90.00**		
15	**6 mos. int. on $4,000**	**60.00**	**$150.00**	
	Less:			
	Accrued int. from April 15 to July 9 on purchase of $4,000	**$ 28.00**		

Plaintiff's Exhibit 11

SCHEDULE F (Continued) 877

	American Tobacco Company (Continued)				
	Less:				
	Accrued int. from April 15 to August 20 on purchase of $4,000	$ 41.67			
	Accrued int. from April 15, to September 10 on purchase of $2,000	24.17	$ 93.84	$ 56.16	
1952					
Apr. 15	6 mos. int. on $6,000		$ 90.00		
	6 mos int. on $4,000		60.00	150.00	878
Oct. 15	6 mos. int. on $10,000			150.00	
1953					
Apr. 15	"			150.00	$ 506.16
	Allied Chemical & Dye Corporation common				
1944					
Dec. 20	Div. on 100 shs. at $1.50			$ 150.00	
1945					
Mar. 20	"			150.00	
June 20	"			150.00	879
Sept. 20	"			150.00	
Dec. 20	"			150.00	
1946					
Mar. 20	"			150.00	
June 20	"			150.00	
Sept. 20	"			150.00	
Dec. 20	"			150.00	
27	Div. on 100 shs. at $2.00			200.00	
1947					
Mar. 20	Div. on 100 shs. at $1.50			150.00	
June 20	"			150.00	
Sept. 22	"			150.00	
Dec. 22	"			150.00	
29	Div. on 100 shs. at $3.00			300.00	

Plaintiff's Exhibit 11

880

SCHEDULE F (Continued)

	Allied Chemical & Dye (Continued)		
	1948		
Mar. 22	Div. on 100 shs. at $1.50	$ 150.00	
June 21	"	150.00	
Sept. 21	"	150.00	
Dec. 21	"	150.00	
28	Div. on 100 shs. at $3.00	300.00	
	1949		
Mar. 21	Div. on 100 shs. at $1.50	150.00	
June 23	"	150.00	
Sept. 20	"	150.00	
881 Dec. 20	Div. on 100 shs. at $5.50	550.00	
	1950		
Mar. 20	Div. on 100 shs. at $2.00	200.00	
June 20	"	200.00	
Sept. 20	Div. on 400 shs. at $ .50	200.00	
Dec. 20	Div. on 400 shs. at $1.50	600.00	
	1951		
Mar. 20	Div. on 400 shs. at $ .50	200.00	
June 20	"	200.00	
Sept. 20	"	200.00	
Dec. 20	Div. on 400 shs. at $1.50	600.00	
	1952		
Mar. 14	Div. on 400 shs. at $ .60	240.00	
882 June 13	"	240.00	
Sept. 12	"	240.00	
Dec. 12	Div. on 400 shs. at $1.20	480.00	
	1953		
Mar. 10	Div. on 400 shs. at $ .60	240.00	$ 8,190.00
	Anaconda Copper Mining Co. capital		
	1944		
Dec. 20	Div. on 200 shs. at $1.00	$ 200.00	
	1945		
Mar. 26	Div. on 200 shs. at $ .50	100.00	
June 25	"	100.00	
Sept. 26	"	100.00	
Dec. 20	Div. on 200 shs. at $1.00	200.00	

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

883

Anaconda Copper Mining Co. (Continued)

1946			
Mar. 29	Div. on 200 shs. at $ .50	$ 100.00	
June 26	"	100.00	
Sept. 30	"	100.00	
Dec. 23	Div. on 200 shs. at $1.00	200.00	
1947			
Mar. 28	Div. on 200 shs. at $ .50	100.00	
June 25	Div. on 200 shs. at $ .75	150.00	
Sept. 26	"	150.00	
Dec. 23	Div. on 200 shs. at $1.00	200.00	
			884
1948			
Mar. 30	Div. on 200 shs. at $ .75	150.00	
June 29	"	150.00	
Sept. 29	"	150.00	
Dec. 23	Div. on 200 shs. at $1.25	250.00	
1949			
Mar. 30	Div. on 200 shs. at $ .75	150.00	
June 29	"	150.00	
Sept. 29	Div. on 200 shs. at $ .50	100.00	
Dec. 23	"	100.00	
1950			
Mar. 30	"	100.00	
June 29	"	100.00	
Sept. 29	"	100.00	885
Dec. 21	Div. on 200 shs. at $1.50	300.00	
1951			
Mar. 29	Div. on 200 shs. at $ .75	150.00	
June 28	"	150.00	
Sept. 20	"	150.00	
Dec. 21	Div. on 200 shs. at $1.25	250.00	
1952			
Mar. 28	Div. on 200 shs. at $ .75	150.00	
June 27	"	150.00	$ 4,600.00

Plaintiff's Exhibit 11

886 SCHEDULE F (Continued)

		E. I. du Pont de Nemours & Company common		
	1944			
	Dec. 14	Div. on 100 shs. at $1.50	$ 150.00	
	1945			
	Mar. 14	Div. on 100 shs. at $1.25	125.00	
	June 14	"	125.00	
	Sept. 14	"	125.00	
	Dec. 14	Div. on 100 shs. at $1.50	150.00	
	1946			
	Mar. 14	Div. on 100 shs. at $1.25	125.00	
887	June 14	Div. on 100 shs. at $1.75	175.00	
	Sept. 16	"	175.00	
	Dec. 14	Div. on 100 shs. at $2.25	225.00	
	1947			
	Mar. 14	Div. on 100 shs. at $2.00	200.00	
	June 16	"	200.00	
	Sept. 15	"	200.00	
	Dec. 15	"	200.00	
	1948			
	Mar. 15	"	200.00	
	June 14	"	200.00	
	Sept. 14	"	200.00	
	Dec. 14	Div. on 100 shs. at $3.75	375.00	
888	1949			
	Mar. 14	Div. on 100 shs. at $2.50	250.00	
	June 14	"	250.00	$ 3,650.00
		Electric Storage Battery Co. common		
	1944			
	Dec. 22	Div. on 22 shs. at $ .50	$ 11.00	
	1945			
	Mar. 31	"	11.00	
	June 30	"	11.00	
	Sept. 29	"	11.00	
	Dec. 31	"	11.00	

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

889

	Electric Storage Battery Co. common (Continued)		
1946			
Mar. 30	Div. on 22 shs. at $ .50	$ 11.00	
July 1	"	11.00	
Sept. 30	"	11.00	
Dec. 31	Div. on 22 shs. at $1.00	22.00	
1947			
Mar. 31	Div. on 22 shs. at $ .75	16.50	
June 30	"	16.50	
Sept. 30	"	16.50	
Dec. 31	"	16.50	

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1948			
Mar. 31	"	16.50	
June 30	"	16.50	
Sept. 30	"	16.50	
Dec. 31	"	16.50	
1949			
Mar. 31	"	16.50	
June 30	Div. on 22 shs. at $ .50	11.00	
Sept. 30	"	11.00	
1950			
Jan. 3	"	11.00	
Mar. 31	"	11.00	
June 30	"	11.00	
Oct. 2	"	11.00	

891

Dec. 29	Div. on 22 shs. at $1.00	22.00	$ 346.50
	Liggett & Myers Tobacco Co. common		
1944			
Dec. 1	Div. on 200 shs. at $1.25	$ 250.00	
1945			
Mar. 1	Div. on 200 shs. at $ .75	150.00	
June 1	"	150.00	
Sept. 1	"	150.00	
Dec. 1	Div. on 200 shs. at $1.25	250.00	

Plaintiff's Exhibit 11

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SCHEDULE F (Continued)

	Liggett & Myers Tobacco Co. (Continued)		
1946			
Mar. 1	Div. on 200 shs. at $ .75		$ 150.00
June 3	"		150.00
Sept. 3	"		150.00
Dec. 2	Div. on 200 shs. at $1.75		350.00
1947			
Mar. 1	Div. on 200 shs. at $ .75		150.00
June 2	"		150.00
Sept. 2	Div. on 200 shs. at $1.00		200.00
Dec. 1	Div. on 200 shs. at $2.00		400.00
893			
1948			
Mar. 1	Div. on 200 shs. at $1.00		200.00
June 1	"		200.00
Sept. 1	"		200.00
Dec. 1	Div. on 200 shs. at $2.00		400.00
1949			
Mar. 1	Div. on 200 shs. at $1.00		200.00
June 1	"		200.00
Sept. 1	"		200.00
Dec. 1	Div. on 200 shs. at $2.00		400.00
1950			
Mar. 1	Div. on 200 shs. at $1.00		200.00
June 1	"		200.00
894 Sept. 1	"		200.00
Dec. 1	Div. on 200 shs. at $2.00		400.00
1951			
Mar. 2	Div. on 200 shs. at $1.00		200.00
June 1	"		200.00
Sept. 4	"		200.00
Dec. 3	Div. on 200 shs. at $2.00		400.00
1952			
Mar. 3	Div. on 200 shs. at $1.00		200.00
June 2	"		200.00
Sept. 2	"		200.00
Dec. 1	Div. on 200 shs. at $2.00		400.00
1953			
Mar. 2	Div. on 200 shs. at $1.00		200.00 $ 7,850.00

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

	Procter and Gamble Co. common	
1944		
Nov. 15	Div. on 100 shs. at $ .50	$ 50.00
1945		
Feb. 15	"	50.00
May 15	"	50.00
Aug. 16	"	50.00
Nov. 15	"	50.00
1946		
Feb. 15	"	50.00
May 15	"	50.00
Aug. 15	"	50.00
Nov. 15	"	50.00
1947		
Feb. 15	Div. on 100 shs. at $1.25	125.00
May 15	"	125.00
Aug. 15	Div. on 100 shs. at $ .75	75.00
Nov. 17	"	75.00
1948		
Feb. 16	"	75.00
May 17	"	75.00
June 15	Div. on 100 shs. at $1.00	100.00
Aug. 16	Div. on 100 shs. at $ .75	75.00
Nov. 15	"	75.00
1949		
Feb. 15	"	75.00
May 16	"	75.00
June 30	Div. on 100 shs. at $1.00	100.00
Aug. 15	Div. on 100 shs. at $ .75	75.00
Nov. 15	"	75.00
1950		
Feb. 15	"	75.00
May 15	Div. on 150 shs. at $1.75	262.50
Aug. 15	Div. on 150 shs. at $ .65	97.50
Nov. 15	"	97.50

Plaintiff's Exhibit 11

898

SCHEDULE F (Continued)

	Procter and Gamble Co. (Continued)		
1951			
Feb. 15	Div. on 150 shs. at $ .65	$ 97.50	
May 15	Div. on 150 shs. at $1.05	157.50	
Aug. 15	Div. on 150 shs. at $ .65	97.50	
Nov. 15	"	97.50	
1952			
Feb. 15	"	97.50	
May 15	"	97.50	
Aug. 15	"	97.50	
Nov. 17	"	97.50	
899			
1953			
Feb. 16	"	97.50	$ 3,120.00
	Standard Brands Inc. common		
1944			
Dec. 15	Div. on 4,250 shs. at $.25	$1,062.50	
1945			
Mar. 15	Div. on 4,250 shs. at $.30	1,275.00	
June 15	"	1,275.00	
Sept. 15	"	1,275.00	
Dec. 15	Div. on 4,250 shs. at $.60	2,550.00	
900			
1946			
Mar. 15	Div. on 4,250 shs. at $.40	1,700.00	
June 17	"	1,700.00	
Sept. 18	"	1,700.00	
Dec. 16	Div. on 4,250 shs. at $.60	2,550.00	
1947			
Mar. 15	Div. on 4,250 shs. at $.50	2,125.00	
June 16	"	2,125.00	
Sept. 17	"	2,125.00	
Dec. 15	"	2,125.00	
1948			
Mar. 15	"	2,125.00	
June 15	"	2,125.00	
Sept. 15	"	2,125.00	
Dec. 17	"	2,125.00	

Plaintiff's Exhibit 11

SCHEDULE F (Continued) 901

	Standard Brands Inc. (Continued)		
1949			
Mar. 15	Div. on 4,250 shs. at $.30	$1,275.00	
June 15	"	1,275.00	
Sept. 15	"	1,275.00	
Dec. 15	Div. on 4,250 shs. at $.55	2,337.50	
1950			
Mar. 15	Div. on 4,250 shs. at $.30	1,275.00	
June 15	"	1,275.00	
Sept. 15	"	1,275.00	
Dec. 15	Div. on 4,250 shs. at $.80	3,400.00	902
1951			
Mar. 15	Div. on 3,950 shs. at $.30	1,185.00	
June 15	"	1,185.00	
Sept. 17	"	1,185.00	
Dec. 17	Div. on 3,950 shs. at $.80	3,160.00	
1952			
Mar. 17	Div. on 3,950 shs. at $.40	1,580.00	
June 16	"	1,580.00	
Sept. 15	"	1,580.00	
Dec. 15	Div. on 3,950 shs. at $.50	1,975.00	
1953			
Mar. 16	Div. on 3,950 shs. at $.40	1,580.00	$ 60,485.00
			903
	Union Carbide & Carbon Corp. capital		
1945			
Jan. 2	Div. on 200 shs. at $.75	$ 150.00	
Apr. 2	"	150.00	
July 2	"	150.00	
Oct. 1	"	150.00	
1946			
Jan. 2	"	150.00	
Apr. 1	"	150.00	
July 1	"	150.00	
Oct. 1	"	150.00	

Plaintiff's Exhibit 11

904

SCHEDULE F (Continued)

		Union Carbide & Carbon Corp. (Continued)		
	1947			
	Jan. 2	Div. on 200 shs. at $ .75	$ 150.00	
	Apr. 1	Div. on 200 shs. at $1.00	200.00	
	July 1	"	200.00	
	Oct. 1	"	200.00	
	1948			
	Jan. 2	"	200.00	
	Apr. 1	"	200.00	
	July 1	Div. on 600 shs. at $ .50	300.00	
	Oct. 1	"	300.00	
905				
	1949			
	Jan. 3	"	300.00	
	Apr. 1	"	300.00	
	July 1	"	300.00	
	Oct. 3	"	300.00	
	1950			
	Jan. 3	"	300.00	
	Apr. 3	"	300.00	
	July 3	"	300.00	
	Oct. 2	"	300.00	
	Dec. 1	"	300.00	
	1951			
	Jan. 2	"	300.00	
906	Mar. 5	"	300.00	
	June 1	"	300.00	
	Sept. 4	"	300.00	
	Dec. 3	"	300.00	
	1952			
	Mar. 3	"	300.00	
	June 2	"	300.00	
	Sept. 2	"	300.00	
	Dec. 1	Div. on 600 shs. at $1.00	600.00	
	1953			
	Mar. 2	Div. on 600 shs. at $ .50	300.00	$ 8,950.00

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

907

Borden Company capital

1944		
Dec. 20	Div. on 103 shs. at $ .50	$ 51.50
1945		
Mar. 2	Div. on 103 shs. at $ .40	41.20
June 1	"	41.20
Sept. 1	"	41.20
Dec. 20	Div. on 103 shs. at $ .60	61.80
1946		
Mar. 2	Div. on 103 shs. at $ .50	51.50
June 3	"	51.50
Sept. 3	"	51.50
Dec. 20	Div. on 103 shs. at $ .75	77.25
1947		
Mar. 1	Div. on 103 shs. at $ .60	61.80
June 2	"	61.80
Sept. 2	"	61.80
Dec. 22	Div. on 103 shs. at $ .75	77.25
1948		
Mar. 1	Div. on 103 shs. at $ .60	61.80
June 1	"	61.80
Sept. 1	"	61.80
Dec. 21	Div. on 103 shs. at $ .75	77.25
1949		
Mar. 1	Div. on 103 shs. at $ .60	61.80
June 1	"	61.80
Sept. 1	"	61.80
Dec. 21	Div. on 103 shs. at $ .90	92.70
1950		
Mar. 1	Div. on 103 shs. at $ .60	61.80
June 1	"	61.80
Sept. 1	"	61.80
Dec. 20	Div. on 103 shs. at $1.00	103.00
1951		
Mar. 2	Div. on 103 shs. at $ .60	61.80
June 1	"	61.80
Sept. 4	"	61.80
Dec. 20	Div. on 103 shs. at $1.00	103.00

908

909

Plaintiff's Exhibit 11

910

SCHEDULE F (Continued)

	Borden Company (Continued)		
1952			
Mar. 3	Div. on 103 shs. at $ .60	$ 61.80	
June 2	"	61.80	
Sept. 2	"	61.80	
Dec. 22	Div. on 103 shs. at $1.00	103.00	
1953			
Mar. 2	Div. on 103 shs. at $ .60	61.80	$ 2,199.05

911

	National Lead Company common		
1944			
Dec. 22	Div. on 245 shs. at $ .62½	$ 153.13	
1945			
Mar. 31	Div. on 245 shs. at $ .12½	30.63	
June 30	"	30.63	
Sept. 29	"	30.63	
Dec. 21	Div. on 245 shs. at $ .62½	153.13	
1946			
Mar. 30	Div. on 245 shs. at $ .12½	30.63	
July 1	Div. on 245 shs. at $ .37½	91.88	
Sept. 30	Div. on 245 shs. at $ .12½	30.63	
Dec. 20	Div. on 245 shs. at $ .87½	214.38	

912

1947			
Mar. 31	Div. on 245 shs. at $ .12½	30.63	
June 30	Div. on 245 shs. at $ .37½	91.88	
Sept. 30	Div. on 245 shs. at $ .25	61.25	
Dec. 22	Div. on 245 shs. at $1.25	306.25	
1948			
Mar. 31	Div. on 245 shs. at $ .25	61.25	
June 30	"	61.25	
Sept. 30	"	61.25	
Dec. 20	Div. on 245 shs. at $ .50	122.50	

Plaintiff's Exhibit 11

SCHEDULE F (Continued) 913

	National Lead Company (Continued)			
1949				
Mar. 31	Div. on 257 shs. at $ .25		$ 64.25	
June 30	"		64.25	
Sept. 30	"		64.25	
Dec. 23	Div. on 257 shs. at $1.50		385.50	
1950				
Mar. 31	Div. on 257 shs. at $ .25		64.25	
June 30	Div. on 257 shs. at $ .50		128.50	
Sept. 29	"		128.50	
Dec. 22	Div. on 257 shs. at $2.75		706.75	914
1951				
Mar. 30	Div. on 257 shs. at $ .50		128.50	
June 29	Div. on 257 shs. at $ .75		192.75	
Sept. 28	"		192.75	$ 3,682.18
	Hiram Walker Gooderham & Worts common			
1952				
Oct. 20	Div. on 200 shs. at $.75	$150.00		
	Plus Canadian premium at 3½%	4.46		
		$154.46		915
	Less Canadian tax—15%	22.50	$ 131.96	
1953				
Jan. 20	Div. on 200 shs. at $.75	$150.00		
	Plus Canadian premium at 2⅞%	3.67		
		$153.67		
	Less Canadian tax—15%	22.50	131.17	

Plaintiff's Exhibit 11

916 SCHEDULE F (Continued)

	Hiram Walker Gooderham & Worts (Continued)			
1953				
Apr. 17	Div. on 200 shs. at $.75	$150.00		
	Plus Canadian premium at 19/16%	1.99		
		$151.99		
	Less Canadian tax—15%	22.50	$ 129.49	$ 392.62
	United States Steel Corporation common			
917				
1944				
Dec. 9	Div. on 100 shs. at $1.00		$ 100.00	
1945				
Mar. 10	"		100.00	
June 9	"		100.00	
Sept. 10	"		100.00	
Dec. 10	"		100.00	
1946				
Mar. 9	"		100.00	
June 10	"		100.00	
Sept. 10	"		100.00	
Dec. 10	"		100.00	
918 1947				
Mar. 10	"		100.00	
June 10	"		100.00	
Sept. 10	"		100.00	
Dec. 10	Div. on 100 shs. at $2.00		200.00	
1948				
Mar. 10	Div. on 100 shs. at $1.25		125.00	
June 10	"		125.00	
Sept. 10	"		125.00	
Dec. 10	"		125.00	
1949				
Mar. 10	Div. on 100 shs. at $2.25		225.00	
June 10	Div. on 100 shs. at $1.50		150.00	
Sept. 12	Div. on 300 shs. at $ .50		150.00	
Dec. 12	"		150.00	

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

919

	United States Steel Corporation (Continued)		
1950			
Mar. 10	Div. on 300 shs. at $ .65	$ 195.00	
June 12	"	195.00	
Sept. 11	"	195.00	
Dec. 11	Div. on 300 shs. at $1.50	450.00	
1951			
Mar. 12	Div. on 300 shs. at $ .75	225.00	
June 11	Div. on 200 shs. at $ .75	150.00	
Sept. 10	"	150.00	
Dec. 10	"	150.00	
			920
1952			
Mar. 10	"	150.00	
June 10	"	150.00	
Sept. 10	"	150.00	
Dec. 10	"	150.00	
1953			
Mar. 10	"	150.00	$ 5,035.00
	Texas Company capital		
1944			
Dec. 15	Div. on 100 shs. at $ .50	$ 50.00	
1945			921
Jan. 2	"	50.00	
Apr. 2	"	50.00	
July 5	"	50.00	
Oct. 5	"	50.00	
1946			
Jan. 2	Div. on 100 shs. at $1.00	100.00	
Apr. 1	Div. on 100 shs. at $ .50	50.00	
July 1	"	50.00	
Oct. 5	"	50.00	
1947			
Jan. 2	Div. on 100 shs. at $1.50	150.00	
Apr. 1	Div. on 100 shs. at $ .50	50.00	
July 1	"	50.00	
Oct. 1	"	50.00	

Plaintiff's Exhibit 11

922

SCHEDULE F (Continued)

Texas Company (Continued)

1948			
Jan. 2	Div. on 100 shs. at $ .75	$ 75.00	
Apr. 7	"	75.00	
July 1	"	75.00	
Oct. 1	"	75.00	
1949			
Jan. 3	Div. on 102 shs. at $ .75	76.50	
Apr. 1	"	76.50	
July 1	"	76.50	
Oct. 4	"	76.50	
Dec. 15	"	76.50	
1950			
Jan. 3	Div. on 102 shs. at $1.00	102.00	
Apr. 3	"	102.00	
July 6	"	102.00	
Oct. 2	"	102.00	
Dec. 11	Div. on 102 shs. at $2.50	255.00	
1951			
Mar. 12	Div. on 102 shs. at $1.00	102.00	
June 11	"	102.00	
Sept. 10	Div. on 204 shs. at $ .65	132.60	
Dec. 10	Div. on 204 shs. at $1.40	285.60	
1952			
Mar. 10	Div. on 204 shs. at $ .65	132.60	
June 10	"	132.60	
Sept. 10	"	132.60	
Dec. 10	Div. on 204 shs. at $1.05	214.20	
1953			
Mar. 10	Div. on 204 shs. at $ .75	153.00	$ 3,532.70

923

924

Plaintiff's Exhibit 11

SCHEDULE F (Continued) 925

	E. I. du Pont de Nemours & Company common		
1949			
Sept. 14	Div. on 400 shs. at $ .65	$ 260.00	
Dec. 14	Div. on 400 shs. at $1.50	600.00	
1950			
Mar. 14	Div. on 400 shs. at $ .75	300.00	
June 14	Div. on 400 shs. at $ .85	340.00	
Sept. 14	Div. on 400 shs. at $1.50	600.00	
Dec. 14	Div. on 400 shs. at $2.25	900.00	
1951			
Mar. 14	Div. on 400 shs. at $ .85	340.00	926
June 14	"	340.00	
Sept. 14	"	340.00	
Dec. 14	Div. on 400 shs. at $1.00	400.00	
1952			
Mar. 14	Div. on 400 shs. at $ .85	340.00	
June 16	"	340.00	
Sept. 15	"	340.00	
Dec. 15	Div. on 400 shs. at $1.00	400.00	
1953			
Mar. 16	Div. on 400 shs. at $ .85	340.00	$ 6,180.00
	National Lead Company common		927
1951			
Dec. 21	Div. on 771 shs. at $ .75	$ 578.25	
1952			
Mar. 28	Div. on 771 shs. at $ .25	192.75	
June 27	"	192.75	
Sept. 26	"	192.75	
Dec. 19	Div. on 771 shs. at $ .70	539.70	
1953			
Mar. 27	Div. on 771 shs. at $ .25	192.75	1,888.95

Plaintiff's Exhibit 11

928

SCHEDULE F (Continued)

		Safeway Stores Inc. cumulative convertible preferred		
	1952			
	Oct. 1	Div. on 100 shs. at $1.12½	$ 112.50	
	1953			
	Jan. 2	"	112.50	$ 225.00
		First National Bank, Chicago, Illinois, capital		
	1946			
929	Apr. 1	Div. on 3 shs. at $2.00	$ 6.00	
	July 1	"	6.00	12.00
		Continental Illinois National Bank & Trust Company common		
	1945			
	Feb. 1	Div. on 24 shs. at $2.00	$ 48.00	
	Aug. 1	"	48.00	
	1946			
	Feb. 1	"	48.00	
	Aug. 1	"	48.00	
	1947			
930	Feb. 1	"	48.00	
	Aug. 1	"	48.00	
	1948			
	Feb. 2	"	48.00	
	Aug. 2	"	48.00	
	1949			
	Feb. 1	"	48.00	
	Aug. 1	"	48.00	
	1950			
	Feb. 1	"	48.00	
	Aug. 3	"	48.00	

Plaintiff's Exhibit 11

SCHEDULE F (Continued)

	Continental Illinois National Bank & Trust Company (Continued)			
1951				
Feb. 1	Div. on 24 shs. at $2.00	$ 48.00		
Aug. 6	"	48.00		
1952				
Feb. 1	"	48.00		
Aug. 1	Div. on 30 shs. at $1.00	30.00		
Nov. 3	"	30.00		
1953				
Feb. 2	"	30.00		
May 1	"	30.00	$ 840.00	
	First National Bank, Chicago, Illinois, common			
1945				
Jan. 2	Div. on 16 shs. at $2.00	$ 32.00		
Apr. 2	"	32.00		
July 2	"	32.00		
Oct. 1	"	32.00		
1946				
Jan. 2	"	32.00		
Apr. 1	"	32.00		
July 1	"	32.00		
Oct. 4	Div. on 19 shs. at $2.00	38.00		
1947				
Jan. 2	"	38.00		
Apr. 1	"	38.00		
July 1	"	38.00		
Oct. 6	"	38.00		
1948				
Jan. 2	"	38.00		
Apr. 7	"	38.00		
July 7	"	38.00		
Oct. 6	"	38.00		

931

932

933

Plaintiff's Exhibit 11

934

SCHEDULE F (Continued)

		First National Bank, Chicago, Illinois, common (Continued)		
	1949			
	Jan. 3	Div. on 19 shs. at $2.00	$ 38.00	
	Apr. 6	Div. on 23 shs. at $2.00	46.00	
	July 1	"	46.00	
	Oct. 3	"	46.00	
	1950			
	Jan. 3	"	46.00	
	Apr. 3	"	46.00	
	July 3	"	46.00	
935	Oct. 2	"	46.00	
	1951			
	Jan. 2	"	46.00	
	Apr. 2	"	46.00	
	July 2	"	46.00	
	Oct. 1	"	46.00	
	1952			
	Jan. 7	"	46.00	
	Apr. 1	Div. on 27 shs. at $2.00	54.00	
	July 1	"	54.00	
	Oct. 8	"	54.00	
	1953			
	Jan. 2	"	54.00	
	Apr. 1	"	54.00	$ 1,426.00

936

Plaintiff's Exhibit 11

SCHEDULE F (Continued) 937

Chicago Corporation common

1946			
Jan. 2	Div. on 13 shs. at $ .25	$ 3.25	
1947			
Jan. 21	"	3.25	
Aug. 1	Div. on 13 shs. at $ .10	1.30	
Nov. 3	"	1.30	
1948			
Feb. 2	"	1.30	
May 3	"	1.30	
Aug. 2	Div. on 13 shs. at $ .15	1.95	
Nov. 1	"	1.95	938
1949			
Feb. 1	"	1.95	
May 2	"	1.95	
Aug. 1	"	1.95	
Nov. 1	"	1.95	
1950			
Feb. 1	"	1.95	
May 1	"	1.95	
Aug. 1	"	1.95	
Nov. 1	"	1.95	$ 31.20
			$131,074.12

939

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

940

SCHEDULE F-1

A statement of all income received in connection with real property constituting corpus of the trust

Premises: Lots #9 and 10 in Block #2 of Dinzee and McDaniels re—subdivision of Blocks #3, 6, 9, 10 and south ½ of Block #8 (703 Park Avenue) in Wilmette Village, Cook County, Illinois

1944				
941 Nov. 2	Rent collections for January to May 1944		$	275.00
1946				
Feb. 26	Rent collections for December 1945, January, February and March 1946			220.00
Apr. 8	Rent collections for	Apr. 1946		55.00
30	"	May "		55.00
June 5	"	June "		55.00
July 2	Rent collections from June 1944 to November 1945			990.00
2	Rent collections for	July 1946		55.00
Aug. 2	"	Aug. "		55.00
Sept. 6	"	Sept. "		55.00
Oct. 5	"	Oct. "		55.00
942 Nov. 6	"	Nov. "		55.00
Dec. 6	"	Dec. "		55.00
1947				
Jan. 8	"	Jan. 1947		55.00
Feb. 6	"	Feb. "		55.00
Mar. 5	"	Mar. "		55.00
Apr. 7	"	Apr. "		55.00
May 9	"	May "		55.00
June 24	"	June "		55.00
July 7	"	July "		55.00
Aug. 8	"	Aug. "		55.00
Sept. 4	"	Sept. "		55.00
Oct. 10	"	Oct. "		55.00
Nov. 12	"	Nov. "		55.00
Dec. 10	"	Dec. "		55.00

Plaintiff's Exhibit 11

SCHEDULE F-1 (Continued) 943

Premises: Lots #9 and 10 in Block #2 of Dinzee and McDaniels re—subdivision of Blocks #3, 6, 9, 10 and south ½ of Block #8 (Continued)

1948			
Jan. 12	Rent collections for Jan. 1948	$	55.00
Feb. 11	" Feb. "		55.00
Mar. 8	" Mar. "		55.00
Apr. 8	" Apr. "		55.00
May 13	" May "		55.00
June 10	" June "		55.00 944
July 9	" July "		55.00
Aug. 5	Rent collections for August 1 to August 5, 1948		9.15
		$	3,034.15

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee. 945

Plaintiff's Exhibit 11

946

SCHEDULE G

A statement of all payments made by the accountant for necessary expenses incurred in the administration of the trust chargeable against income.

		To Collector of Internal Revenue in payment of Federal Income tax		
	1945 Mar. 15	For year 1944	$ 581.41	
	1946 Mar. 15	For year 1945	3,135.39	
947	1947 Mar. 15	For year 1946	3,883.15	
	1948 Mar. 15	For year 1947	4,428.12	
	1949 Mar. 15	For year 1948	1,783.54	
	1950 Mar. 15	For year 1949	3,617.48	
	1951 Apr. 16	For year 1950	1,328.91	
	1952 Apr. 15	For year 1951	5,837.14	
948	1953 Apr. 13	For year 1952	7,006.65	$31,601.79
		To The Chase National Bank of the City of New York, Trustee's commissions on income		
	1945 Mar. 21	For period ending March 20, 1945 3% on $4,797.33	$ 143.92	
	1946 Mar. 22	For period ending March 20, 1946 3% on $11,811.97	354.36	
	1947 Mar. 21	For period ending March 20, 1947 3% on $13,595.66	407.87	

Plaintiff's Exhibit 11

SCHEDULE G (Continued)

949

	To The Chase National Bank of the City of New York (Continued)		
1948			
Mar. 30	For period ending March 20, 1948 3% on $15,537.56	$ 466.13	
1949			
Mar. 21	For period ending March 20, 1949 3% on $15,978.05	479.34	
1950			
Mar. 24	For period ending March 20, 1950 3% on $14,427.51	432.83	
			950
1951			
Mar. 23	For period ending March 20, 1951 3% on $18,255.90	547.68	
1952			
Mar. 25	For period ending March 20, 1952 3% on $18,355.63	550.67	
1953			
May 4	For period ending March 20, 1953 3% on $19,044.83	571.34	
8	For period ending May 8, 1953 3% on $2,303.83	69.11	$ 4,023.25
1948			
Feb. 25	To Milbank, Tweed, Hope & Hadley for disbursements	$ 221.75	951
25	To Thomas A. Ryan for attorney's fees	3,000.00	
Mar. 20	To Jeremiah P. Lyon for services as guardian ad litem	3,500.00	6,721.75
			$42,346.79

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

952

SCHEDULE G-1

A statement of all payments made from income in connection with interest on real property constituting corpus of the trust estate.

Premises: Interest on Lots #9 and 10 in Block #2 of Dinzee and McDaniels re—subdivision of Blocks #3, 6, 9, 10 and south ½ of Block #8 (703 Park Avenue) in Wilmette Village, Cook County, Illinois held by Chicago Title & Trust Company as Trustee

1944				
Nov.	2	A. McDaniels commission on collections for January, February, March, April and May 1944		$ 13.75
953				
	2	Broderick Heating Systems Inc. oil burner repairs		65.00
	29	American Agricultural Insurance Company for premium on fire insurance expiring November 1, 1947		83.10
1945				
Feb.	15	Travelers Insurance Company public liability insurance premium for policy expiring January 1, 1948		7.95
Mar.	22	First installment 1944 tax		
		Lot #9	$49.89	
954		Lot #10	32.94	82.83
[illegible]	1	Second installment 1944 tax		
		Lot #9	$49.89	
		Lot #10	32.94	82.83
1946				
Feb.	26	The Chase National Bank of the City of New York commissions on December 1945, January, February and March 1946 collections		11.00
Mar.	29	Chicago Title & Trust Co. fee for holding title for year ending March 21, 1947		6.2[illegible]

Plaintiff's Exhibit 11

SCHEDULE G-1 (Continued) 955

1946					
Apr.	9	First installment 1945 tax			
		Lot #9	$50.89		
		Lot #10	33.60	$ 84.49	
May	16	The Chase National Bank of the City of New York commissions on April 1946 collections		5.50	
	17	Torsen Bros. shingling part of roof and repairs		120.38	
July	2	Charles Brethold Company commission on collections June 1, 1944 to November 30, 1945		49.50	956
	2	Shampel Heat Company, oil burner repairs		3.50	
	2	N. J. Mergenthaler, plumbing repairs		114.99	
	2	Abco Electric Company, oil burner repairs		11.00	
	2	C. Knobel, carpentry repairs and gardening		64.15	
	2	Clarence Brown, general repairs		23.75	
	2	C. H. Brethold, special services re—O. P. A.		20.00	
	16	The Chase National Bank of the City of New York commission on May 1946 collections		2.75	957
Aug.	7	Second installment 1945 tax			
		Lot #9	$50.89		
		Lot #10	33.60	84.49	
	15	The Chase National Bank of the City of New York commission on July 1946 collections		2.75	

for necessary expenses incurred in the administration of the trust chargeable against principal. 985

Schedule FF, hereto annexed, contains a statement of all income collected by the accountant from May 9, 1953 to August 4, 1953.

The following is a Summary Statement of the said supplemental account:

As to Principal

Balance as shown in main account Schedule E		$681,834.54
		986
Amount of all decreases as set forth in Schedule BB	$ 9.77	
Amount of all payments made for administration expenses as set forth in Schedule CC	12,623.35	12,633.12
		$669,201.42

As to Income

		987
Balance as shown in main account		$ 390.38
Amount of income collected as set forth in Schedule FF	$ 5,088.68	5,088.68
		$ 5,479.07

Plaintiff's Exhibit 12

SCHEDULE BB

991

A statement showing all sales and changes in property received by the accountant, purchases, and any and all increases or decreases in the value thereof.

		Inventory	Proceeds	Decreases
1953				
June 1	$32,000 United States of America Treasury Certificate of Indebtedness Series "B" 1⅞% due June 1, 1953	$32,009.77	$32,000.00	$ 9.77

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

992

By P. Y. EASTMAN
Personal Trust Officer
Trustee.

SCHEDULE CC

A statement of all payments made by the accountant for necessary expenses incurred in the administration of the trust chargeable against principal.

1953			
June 5	Check to Thomas A. Ryan for professional services rendered on question "gift tax liability"	$5,000.00	
	disbursements	123.35	$ 5,123.35
17	Check to Thomas A. Ryan for professional services in administration of trust and proceedings for final settlement of Trustee's account		7,500.00
			$12,623.35

993

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By P. Y. EASTMAN
Personal Trust Officer
Trustee.

Plaintiff's Exhibit 11

958

SCHEDULE G-1 (Continued)

1946			
Sept. 16	The Chase National Bank of the City of New York commission on August 1946 collections	$	2.75
Oct. 14	The Chase National Bank of the City of New York commission on September 1946 collections		2.75
Nov. 20	The Chase National Bank of the City of New York commission on October 1946 collections		2.75
Dec. 13	The Chase National Bank of the City of New York commission on November 1946 collections		2.75
959			
1947			
Jan. 13	The Chase National Bank of the City of New York commission on December 1946 collections		2.75
Feb. 14	The Chase National Bank of the City of New York commission on January 1947 collections		2.75
Mar. 10	The Chase National Bank of the City of New York commission on February 1947 collections		2.75
27	Chicago Title & Trust Company fee for holding title for year ending March 21, 1948		6.25
960			
Apr. 11	The Chase National Bank of the City of New York commission on March 1947 collections		2.75
25	Payment 1946 taxes in full		191.16

Plaintiff's Exhibit 11

SCHEDULE G-1 (Continued)

		The Chase National Bank of the City of New York	
1947			
May	12	commission on Apr. 1947 collections	$ 2.75
June	6	" May "	2.75
July	11	" June "	2.75
Aug.	12	" July "	2.75
Sept.	12	" Aug. "	2.75
Oct.	15	" Sept. "	2.75
1947			
Nov.	6	American Insurance Company fire insurance from November 1, 1947 to November 1, 1950 $6,660.	50.84
	6	Agricultural Insurance Company fire insurance from November 1, 1947 to November 1, 1950 $4,000	32.00
	17	The Chase National Bank of the City of New York commissions on October 1947 collections	2.75
Dec.	1	Kutten Bros., fuel pump for furnace and installation	16.75
	16	The Chase National Bank of the City of New York commissions on November 1947 collections	2.75
1948			
Jan.	13	The Chase National Bank of the City of New York commissions on December 1947 collections	2.75
Feb.	16	Milton H. Friend appraisal of property	50.00
	25	The Chase National Bank of the City of New York commissions on January 1948 collections	2.75
Mar.	10	The Chase National Bank of the City of New York commissions on February 1948 collections	2.75

Plaintiff's Exhibit 11

964 SCHEDULE G-1 (Continued)

1948				
Mar. 16	Photostat charges re copy of appraisal for Alien Property Custodian			$ .72
23	Chicago Title & Trust Co. fee for holding title for year ending March 21, 1949			20.00
Apr. 8	The Chase National Bank of the City of New York commissions on March 1948 collections			2.75
28	Travelers Insurance Co. public liability from January 1, 1948 to January 1, 1951		$ 8.03	
965	Less: refund on cancellation		6.44	1.59
29	Payment of 1947 taxes in full			196.70
	The Chase National Bank of the City of New York			
May 6	commissions on Apr. 1948 collections			2.75
June 15	" May "			2.75
July 20	" June "			2.75
Aug. 17	" July "			2.75
				$1,571.97
	Less: Refunds on sale of property			
	Paving assessment		$ 8.80	
966	Insurance		61.88	70.68
				$1,501.29

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

967

SCHEDULE H

A statement of amount of accrued interest advanced on purchases of securities to be subsequently refunded on next interest date.

1952			
July 7	Accrued interest from June 1 to July 7, 1952 on purchase of $32,000 United States of America Treasury Certificate of Indebtedness Series "B" 1⅞% due June 1, 1953	$	9.86
			968
1953			
Mar. 4	Accrued interest from January 1 to March 4, 1953 on purchase of $10,000 Cleveland Electric Illuminating Co. 1st mortgage 3% due July 1, 1970		52.50
		$	62.36

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

969

By: .....
Personal Trust Officer

Trustee

Plaintiff's Exhibit 11

970

SCHEDULE I

A statement of investments made by the accountant out of income showing disposition of same and any and all increases or decreases in value thereof.

		Inventory	Proceeds or Still Held	In-creases	De-creases
1949					
Dec. 29	Purchased $67,000 United States of America Certificate of Indebtedness Series "H" 1⅛% due October 1, 1950 at 100.031530 net	$ 67,021.13			
971 1950					
May 26	Purchased $4,000 above at 99.984816 net	3,999.39			
Sept. 1	Sold $71,000 above at 100 net		$ 71,000.00		$20.52
1950					
Sept. 1	Purchased $71,000 United States of America Treasury Series "E" 1¼% due August 1, 1951 at 99.94323 net	70,959.69			
Nov. 8	Purchased $7,000 above at 99.865583 net	6,990.59			
Dec. 14	$78,000 above transferred to corpus of trust		77,950.28		
972		$148,970.80	$148,950.28		$20.52

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

SCHEDULE J

973

A statement of funds transferred from income to corpus of trust

1950			
Dec. 14	Cash transferred from income to corpus of trust	$2,245.04	
27	"	5,000.00	
1951			
Mar. 21	"	1,966.18	
May 2	"	847.10	
July 2	"	3,301.55	
Sept. 4	"	1,604.15	
Nov. 1	"	2,765.88	
1952			974
Jan. 2	"	6,740.68	
Mar. 3	"	987.02	
July 2	"	1,594.66	
Aug. 7	"	108.48	
Sept. 2	"	803.00	
Nov. 3	"	3,363.81	
1953			
Jan. 2	"	5,607.65	
Mar. 12	"	1,691.27	$ 38,626.47
1950			
Dec. 15	$78,000 United States of America Treasury Series "E" 1¼% due August 1, 1951 transferred from income to corpus of trust		975 77,950.28
			$116,576.75

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

SCHEDULE K

976 A statement showing the computation of principal commissions due the accountant upon this accounting.

Total disbursements as set forth in Schedule "D" of accounting dated October 19, 1944	$ 36,764.84	
Total distributions as set forth in Schedule "E" of accounting dated October 19, 1944	25,000.00	
Total disbursements as set forth in Schedule "D" of this accounting	13,795.64	
977 Total distribution of corpus as set forth in Schedule "F" of this accounting	681,834.54	
	$757,395.02	
Commission at 1% on $757,395.02		$7,573.95
Less: Commission charged March 10, 1941 as shown in Schedule "D" of accounting dated October 19, 1944		609.40
Principal commissions due		$6,964.55

978 THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By: .....
Personal Trust Officer

Trustee.

Plaintiff's Exhibit 11

State of New York,
County of New York—ss.:

PHILIP Y. EASTMAN, being duly sworn, says: That he is a Personal Trust Officer of The Chase National Bank of the City of New York, Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York; that the schedules of assets of the trust reported by the Trustee are true and complete and include all money and property of any kind, and all increment thereon, which have come into its hands or have been received on its account by any other person for the period from October 19, 1944 to May 8, 1953; that the moneys stated in said account as collected by it were all that could be collected; that all claims for credit for losses or decreases of value of assets are correctly reported; that the reported payments by it out of trust assets for expenses were actually made and made in the amounts scheduled; that all receipts and disbursements are correctly and fully reported and scheduled; that he does not know of any error in the account or in any schedule thereof, nor does he know of any matter or thing relating to the said trust omitted therefrom to the prejudice of the rights of any person interested in the said trust.

979 980 981

.....

Sworn to before me this
day of , 1953.

Plaintiff's Exhibit 12

982

SUPPLEMENTAL ACCOUNT OF PROCEEDINGS

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles
983 L. Cobb and The Chase National Bank of the City of New York,

Plaintiff,

—against—

BRUNO REINICKE, et al.,

Defendants.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK does hereby render the following ac-
984 count of its proceedings as Trustee as aforesaid for the period from May 9, 1953 to August 4, 1953.

Schedule BB, hereto annexed, contains a statement showing all sales and changes in property received by the accountant, purchases, and any and all increases or decreases in the value thereof.

Schedule CC, hereto annexed, contains a statement of all payments made by the accountant

Plaintiff's Exhibit 12

988 The foregoing principal balance of $669,201.42 consists of cash in the sum of $21,579.02 and other property on hand on August 4, 1953 having an inventory value of $647,622.40, being the same securities set forth in Schedule E of the main account except $32,000.00 United States of America Treasury Certificate of Indebtedness Series "B" which has since matured.

The said schedules, which are annexed hereto, are a part of this account.

989 Dated: Dec 4—1953

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By P. Y. EASTMAN
Personal Trust Officer

Trustee.

990

Plaintiff's Exhibit 12

994

SCHEDULE FF

A statement of all income collected by the accountant from May 9, 1953 to August 4, 1953.

	Procter and Gamble Co. common	
1953 May 15	Dividend 150 shares at $.65	$ 97.50
	Detroit Edison Co. general and refunding 3% mortgage Series "H" due 1970	
995 1953 June 1	Interest on $10,000	150.00
	Pacific Gas and Electric 1st and refunding 3% Series "L" due 1974	
1953 June 1	Interest on $10,000	150.00
	Union Carbide & Carbon Corp. capital	
1953 June 1	Dividend 600 shares at $.50	300.00
996	Liggett & Myers Tobacco Co. common	
1953 June 1	Dividend 200 shares at $1.00	200.00
	Borden Company capital	
1953 June 1	Dividend 103 shares at $.60	61.80
	United States of America Treasury Certificate of Indebtedness Series "B" 1⅞% due June 1, 1953	
1953 June 1	Interest on $32,000	550.68

Plaintiff's Exhibit 12

	United States Steel Corporation common		997
1953 June 10	Dividend 200 shares at $.75	$ 150.00	
	Allied Chemical & Dye Corporation common		
1953 June 10	Dividend 400 shares at $.60	240.00	
	Texas Company capital		
1953 June 10	Dividend 204 shares at $.75	153.00	
			998
	Standard Brands Inc. common		
1953 June 15	Dividend 3,950 shares at $.40	1,580.00	
	E. I. du Pont de Nemours & Company common		
1953 June 15	Dividend 400 shares at $.85	340.00	
	United States of America Treasury bonds dated November 15, 1945 2¼% due 1962		999
1953 June 15	Interest on $10,000	112.50	
	United States of America Treasury bonds dated June 1, 1945 2½% due 1972		
1953 June 15	Interest on $4,000	50.00	
	Great Northern Railway Co. non-cumulative preferred		
1953 June 18	Dividend 100 shares at $1.00	100.00	

tify that the foregoing is a copy of the order made by said court upon the appeal in the above entitled action or proceeding; and entered in my office on the 14th day of June, 1955, and that the original case or papers upon which said appeal was heard are hereunto annexed.

In witness whereof, I have hereunto set my hand and affixed the seal of said Court, in the County of New York this 14th day of June, 1955.

[SEAL] GEORGE T. CAMPBELL,
Clerk.

346 IN THE SUPREME COURT OF NEW YORK, SPECIAL TERM, COUNTY OF NEW YORK

Order Index #12138-1953

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH, 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, PLAINTIFF,

AGAINST

BRUNO REINICKE, ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA REINICKE SCHAEFER, HANS DIETRICH SCHAEFER, KLAUS REINICKE, FRITZ REINICKE, GERTRUD ERNST, HANS EGON SCHWARZBURGER, HANS ULRICH SCHWARZBURGER, ELISABETH SCHWARZBURGER, CHRISTA SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE SCHWARZBURGER, CHARLOTTE ROTT, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, BERND VOM BAUR, ROLAND ROTT, CHRISTOPH ROTT, ROSELORE KOSTER, FORMERLY ROTT, TILO KOSTER, SITTA KOSTER AND HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFENDANTS

Present: Honorable Matthew M. Levy, Justice.

Order Making Order of Court of Appeals the Order of this Court—Oct. 20, 1955

The above named defendant, Herbert Brownell, Jr., Attorney General of the United States, as Successor to the Alien Property Custodian, having made a motion in the Court of Appeals of the State of New York for leave to appeal from the judgment of affirmance of this Court entered upon the order of the

Plaintiff's Exhibit 12

1000		National Lead Company common		
	1953 June 26	Dividend 771 shares at $.40		$ 308.40
		Cleveland Electric Illuminating Co. 1st mortgage 3% due 1970		
	1953 July 1	Interest on $10,000		150.00
		First National Bank of Chicago, Illinois common		
1001	1953 July 1	Dividend 27 shares at $2.00		54.00
		Hiram Walker Gooderham & Worts common		
	1953 July 21	Dividend 200 shares at $.75	$150.00	
		Less Canadian tax	22.50	
			$127.50	
		Plus Canadian premium at 5/8%	.80	128.30
1002		American Telephone & Telegraph Co. debenture 2¾% due 1971		
	1953 Aug. 3	Interest on $10,000		137.50
		Commonwealth Edison Co. 1st mortgage Series "L" 3% due 1977		
	1953 Aug. 3	Interest on $3,000		45.00

347 Appellate Division of the Supreme Court First Judicial Department in the Office of the Clerk of the County of New York on the 5th day of July, 1955, affirming the judgment in favor of the plaintiff and against the defendants heretofore entered herein, in the office of the said Clerk on the 22d day of June, 1954, and from each and every part of said judgment of affirmance and order of affirmance as well as from the whole thereof; and the said motion having been duly heard by the Court of Appeals and after due deliberation the Court of Appeals having denied said motion with $10.00 costs and necessary printing disbursements;

Now, upon motion of Thomas A. Ryan, attorney for the plaintiff herein, it is hereby

Ordered that the said order of the Court of Appeals be and the same is hereby made the order of this Court

ENTER,
M. M. L.

J. S. C.

348 IN COURT OF APPEALS OF NEW YORK

Mo. No. 350

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH, 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, PLAINTIFF-RESPONDENT.

VS.

BRUNO REINICKE, & ORS., DEFENDANTS-RESPONDENTS

AND

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFENDANT-APPELLANT.

Present, Hon. Albert Conway, Chief Judge, presiding.

Order Denying Motion for Leave To Appeal—Oct. 6, 1955

A motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein, and papers having been duly submitted thereon, and due deliberation thereupon had:

Ordered, that the said motion be and the same hereby is denied with ten dollars costs and necessary printing disbursements.

[SEAL] A copy
State of New York
Court of Appeals

GEARON KIMBALL,
Deputy Clerk.

Plaintiff's Exhibit 12

	Continental Illinois National Bank & Trust Co. common		1003
1953 Aug. 3	Dividend 30 shares at $1.00	$ 30.00	
		$5,088.68	

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK

By P. Y. EASTMAN
Personal Trust Officer

Trustee.

1004

State of New York,
County of New York—ss.:

PHILIP Y. EASTMAN, being duly sworn, says: That he is a Personal Trust Officer of The Chase National Bank of the City of New York, Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York; that the schedules of assets of the trust reported by the Trustee are true and complete and include all money and property of any kind, and all increment thereon, which have come into its hands or have been received on its account by any other person for the period from May 9, 1953 to August 4, 1953; that the moneys stated in said account as collected by it were all that could be collected; that all claims for credit for losses or decreases of value of assets are correctly reported; that the reported payments by it out

1005

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH, 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, PLAINTIFF

AGAINST

BRUNO REINICKE, ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA REINICKE SCHAEFER, HANS DIETRICH SCHAEFER, KLAUS REINICKE, FRITZ REINICKE, GERTRUD ERNST, HANS EGON SCHWARZBURGER, HANS ULRICH SCHWARZBURGER, ELISABETH SCHWARZBURGER, CHRISTA SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE SCHWARZBURGER, CHARLOTTE ROTT, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, BERND VOM BAUR, ROLAND ROTT, CHRISTOPH ROTT, ROSELORE KOSTER, FORMERLY ROTT, TILO KOSTER, SITTA KOSTER AND HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFENDANTS

Judgment—July 5, 1955

The above named defendant, Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian, having appealed to the Appellate Division of the Supreme Court, First Department, from the judgment of the Supreme Court entered in the office of the Clerk of the County of New York on the 22d day of June, 1954, granting judgment for the plaintiff and the said appeal having come on to be heard before the said Appellate Division and the said Appellate Division having duly made an order dated June 14, 1955, a certified copy of which, with the papers upon which the appeal was
350 heard, was filed on June 17, 1955, in the Office of the Clerk of the County of New York by which it appears that the said Appellate Division has ordered unanimously that the said judgment so appealed from as aforesaid, be in all things affirmed with costs, and said costs, having been duly taxed,

Now, on motion of Thomas A. Ryan, Esq., attorney for the plaintiff herein, The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York of 18 Pine Street, New York, N. Y., it is

Adjudged, that the judgment entered herein on the 22nd day of June, 1954, be and the same hereby is in all things affirmed and it is further

1006 of trust assets for expenses were actually made and made in the amounts scheduled; that all receipts and disbursements are correctly and fully reported and scheduled; that he does not know of any error in the account or in any schedule thereof, nor does he know of any matter or thing relating to the said trust omitted therefrom to the prejudice of the rights of any person interested in the said trust.

P. Y. EASTMAN

1007

Sworn to before me this
day of Dec. 4, 1953.

ARTHUR L. PHILLIPS
Notary Public in the State of New York
No. 60-8357000
Appointed for Westchester County
Cert. filed in N. Y. Co.
Commission expires March 30, 1954

1008

Adjudged, That the said The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and the Chase National Bank of the City of New York of 18 Pine Street, New York, New York, recover of the defendant Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian of Washington, D. C., the sum of two hundred eleven and 93/100 dollars ($211 93/100) the amount of its costs herein as taxed, and it is further

Adjudged, that the infant defendant-respondent herein, Hans Dietrich Schaefer by his guardian-ad-litem, Samuel Anatole Lourie, of 15 Broad Street, New York, N. Y., and defendants-respondents herein Bruno Carl Reinicke of 938 N. 13th Street, Manitowoc, Wisconsin; Robert Hans Reinicke, of 3210 W. Juneau Avenue, Milwaukee 8, Wisconsin, and Johanne Maria Reinicke Schaefer of 4222 Clements, Detroit, Michigan, recover of the defendant Herbert Brownell, Jr., Attorney General of the
351 United States as Successor to the Alien Property Custodian of Washington, D. C., the sum of one hundred twenty-seven and 62/100 dollars ($127 62/100) the amount of their costs as taxed, and it is further

Adjudged, that the infant defendants-respondents herein, Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Bauer, Christoph Rott, Tilo Koster and Sitta Koster by their guardian-ad-litem Arthur J. O'Leary, Esq. of 70 Pine Street, New York, N. Y., recover of the defendant Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian of Washington, D. C., the sum of Ninety and 53/100 dollars ($90 53/100) the amount of their costs as taxed.

Judgment signed and entered this 5th day of July, 1955.

ARCHIBALD R. WATSON,
Clerk.

352 IN THE SUPREME COURT OF NEW YORK, COUNTY OF NEW YORK

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH, 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, PLAINTIFF-RESPONDENTS,

AGAINST

BRUNO REINICKE, ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA REINICKE SCHAEFER,

HANS DIETRICH SCHAEFER, KLAUS REINICKE, FRITZ REINICKE, GERTRUD ERNST, HANS EGON SCHWARZBURGER, HANS ULRICH SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, ELISABETH SCHWARZBURGER, CHRISTA SCHWARZBURGER, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE SCHWARZBURGER, CHARLOTTE ROTT, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, BERND VOM BAUR, ROLAND ROTT, CHRISTOPH ROTT, ROSELORE KOSTER, FORMERLY ROTT, TILO KOSTER, SITTA KOSTER, DEFENDANTS-RESPONDENTS,

AND

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFENDANT-APPELLANT.

Notice of Appeal—Dec. 6, 1955

SIRS: Please take notice that pursuant to 28 U. S. C. A. Section 1257 (1), the defendant, Herbert Brownell, Jr. Attorney General of the United States, as successor to the Alien Property
353 Custodian, hereby appeals to the Supreme Court of the United States from the final order of the Supreme Court, County of New York, State of New York, entered the 20th day of October, 1955, which said order made an order of the Court of Appeals of the State of New York, dated October 6, 1955, denying defendant's motion for leave to appeal from the judgment of affirmance of the Supreme Court, New York County, entered upon the order of the Appellate Division of the Supreme Court, First Judicial Department, State of New York, in the office of the Clerk of the County of New York, on the 5th day of July, 1955, affirming the judgment in favor of the plaintiff and against the defendants heretofore entered in this action in the office of the said Clerk on the 22d day of June, 1954, and from each and every part of said judgment of affirmance and order of affirmance, as well as from the whole thereof.

Please take further notice that the Clerk is hereby requested to prepare a transcript of the record in this action for transmission to the Clerk of the Supreme Court of the United States and include in the said transcript the following:

1. Printed "Record on Appeal" before the Appellate Division of the Supreme Court, First Department, State of New York.

Defendant's Exhibit A

1009

U.S. TERMINATES FURTHER VESTING OF GERMAN PROPERTY

WHITE HOUSE ANNOUNCEMENT OF APRIL 17[1]

The White House on April 17 announced the termination of the program for vesting German-owned properties located in the United States. This action constitutes a further step in the orderly conclusion of a wartime measure inaugurated by the U.S. Government shortly after the outbreak of World War II.

1010

Attorney General Brownell stated that after April 17, 1953, the Department of Justice will not issue any orders vesting new or additional German properties. Secretary of State Dulles stated that the decision taken represents one of a series of progressive steps looking toward the development of normal relations between the United States and the Federal Republic of Germany.

Under the provisions of the Trading with the Enemy Act, enemy-owned properties in the United States at the outbreak of World War II were immediately immobilized and later vested. Immobilization prevented the enemy from using these assets to further its war effort, and by vesting these assets the U.S. Government obtained reparation for the payment-of-war claims.

1011

DEPARTMENT OF STATE BULLETIN

[1] Released to the press at Augusta, Ga.

1012 **Opinion of Schreiber, *J.***

(New York Law Journal, May 28, 1954, p. 7.)

SUPREME COURT

SPECIAL TERM, PART III, NEW YORK COUNTY
By MR. JUSTICE SCHREIBER

"Chase Nat. Bank of City of N. Y. v. *Reinicke*—
The plaintiff-trustee's prayer for relief in the
1013 settlement of its accounts is granted. The relief requested in the answer of the attorney general is denied. Whatever may be the difference between the original and the amended vesting orders the indisputable fact remains that there is at least one person now in being who is a United States citizen and who may well become entitled to the entire principal of this trust upon its termination. The decisions in *Matter of Sandhagen* (200 Misc., 847) and *Matter of Young* (204 Misc., 92) are not controlling. In *Matter*
1014 *of Sandhagen,* it was discovered after the decision and an appeal taken therefrom that the life beneficiary of both trusts had died prior to the entry of the decree and there was therefore no dispute that the trust res had vested in enemy aliens. In *Matter of Young,* after an appeal had been taken the attorney general stipulated that the principal was to remain with the trustee and that the trustee was to pay him only the income, which admittedly belonged to an enemy alien. The attorney general will be

2. The final order of the Appellate Division of the Su-
354 preme Court, First Department, entered in the office of the Clerk of the Appellate Division on the 14th day of June, 1955 which unanimously affirmed the judgment of the Supreme Court, New York County, State of New York, entered June 22, 1954.

3. Defendant-appellant's printed brief on his appeal to the Appellate Division of the Supreme Court of the State of New York, First Department.

4. The judgment on remittitur entered in the office of the Clerk of the Supreme Court, New York County, on July 5, 1955.

5. The order of the Court of Appeals of the State of New York denying defendant-appellant's motion for leave to appeal to the Court of Appeals from said final order of the Appellate Division, which said Court of Appeals order was duly entered in the office of the Clerk of the Court of Appeals on the 6th day of October, 1955.

6. The defendant-appellant's notice of appeal to the Court of Appeals, State of New York, dated July 28, 1955.

7. The order of the Supreme Court, New York County, entered October 20, 1955, in the office of the Clerk, County of New York, making the order of the Court of Appeals, dated October 6, 1955, the order of the Supreme Court, New York County.

The questions presented by this appeal are stated as follows:

355 (a) Whether the Attorney General of the United States, having on April 6, 1953, *res* vested by an amendment to a right, title; and interest vesting order issued in 1945 under the Trading with the Enemy Act the property held by the Chase National Bank of the City of New York as trustee under an indenture of trust, became entitled to the immediate possession of said property.

(b) Whether the Court erred in failing to hold that by the said 1953 amendment to the 1945 vesting order the Attorney General of the United States became entitled to the immediate possession of the property covered by that amendment.

Dated: New York, N. Y., December 6, 1955.

Yours, etc.,

PAUL W. WILLIAMS,

United States Attorney for the Southern District of New York, Attorney for HERBERT BROWNELL, JR., *Attorney General of the United States, Defendant. Office and Post Office address: United States Court House, Foley Square, Borough of Manhattan (7), City of New York.*

fully protected and complete justice done to all parties herein, particularly in view of the direction in the instant trust indenture (valid under Illinois law) that all income is to be accumulated and added to principal, by a direction to be inserted in the judgment to be entered herein that no payments of principal or income are to be made by the trustee to any beneficiary without sixty days' written notice to the attorney general, such notice to be given by registered mail. Settle judgment." 1015

1016

1017

To: THOMAS A. RYAN, ESQ.,
Attorney for Plaintiff-Respondent,
37 Wall Street, New York 5, N. Y.

SAMUEL ANATOLE LOURIE,
Guardian ad Litem for infant Defendant-Respondent; Hans Dietrich Schaefer, and Attorney for Defendants-Respondents, Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, 15 Broad Street, New York 5, N. Y.

356 To: ARTHUR J. O'LEARY,
Guardian ad Litem for Infant Defendants-Respondents, Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Baur, Christoph Rott, Tilo Koster and Sitta Koster, 70 Pine Street, New York 5, N. Y.

CLERK OF THE SUPREME COURT,
New York County.

357 Clerk's Certificate to foregoing transcript omitted in printing.

358 SUPREME COURT OF THE UNITED STATES

No. 601, October Term, 1955

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, PETITIONER,

vs.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE, ETC., ET AL.

Order allowing certiorari. Filed February 27, 1956

The petition herein for a writ of certiorari to the Appellate Division of the Supreme Court of the State of New York, First Department, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceeding below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Clark and Mr. Justice Harlan took no part in the consideration or decision of this application.

U. S. GOVERNMENT PRINTING OFFICE: 1956

1018 **Stipulation Settling Case**

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that the foregoing case contains all the evidence taken upon the trial and all exceptions of all parties and that an order may be entered herein settling the same as such and ordering the same on file without further notice.

Dated, New York, March 15, 1955.

1019

J. EDWARD LUMBARD,
United States Attorney for the Southern District of New York, Attorney for Defendant-Appellant.

THOMAS A. RYAN,
Attorney for Plaintiff-Respondent.

SAMUEL ANATOLE LOURIE,
Guardian ad Litem and Attorney for Defendants-Respondents, Bruno
1020 Reinicke, et al.

ARTHUR J. O'LEARY,
Guardian ad Litem for Infant Defendants-Respondents

Order Settling Case

1021

On the foregoing stipulation the above case on appeal is hereby settled and ordered on file.

Dated, New York, March , 1955.

BENJAMIN F. SCHREIBER,
J. S. C.

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1024 **Stipulation Waiving Certification**

IT IS HEREBY STIPULATED by and between the attorneys for the respective parties hereto that the foregoing are true copies of the judgment roll, the notice of appeal, the case and exceptions as settled and the whole thereof now on file in the Office of the Clerk of the County of New York and that certification thereof is hereby waived and that an order directing the filing of the record in the Appellate Court may be entered
1025 without further notice.

Dated, New York, March 15, 1955.

J. EDWARD LUMBARD,
United States Attorney for the Southern District of New York, Attorney for Defendant-Appellant.

THOMAS A. RYAN,
Attorney for Plaintiff-Respondent.

1026 SAMUEL ANATOLE LOURIE,
Guardian ad Litem and Attorney for Defendants-Respondents, Bruno Reinicke, et al.

J. ARTHUR O'LEARY,
Guardian ad Litem for Infant Defendants-Respondents.

Order Filing Record in Appellate Division 1027

Pursuant to the foregoing stipulation, it is ordered that the foregoing printed record be filed in the office of the Clerk of the Appellate Division of the Supreme Court, First Judicial Department.

Dated, New York, March , 1955.

BENJAMIN F. SCHREIBER,
J. S. C.

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344 IN THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

No. 9035

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH, 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, PLTF.-RESPT.,

VS.

BRUNO REINICKE, ELISABETH REINICKE, BRUNO CARL REINICKE, JOHANNE MARIA REINICKE SCHAEFER, ET AL., DEFTS.-RESPTS.,

AND

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, DEFT.-APPLT.

Present: Hon. David W. Peck, Presiding Justice; Hon. Albert Cohn, Hon. Earl C. Bastow, Hon. Bernard Botein, Hon. Benjamin J. Rabin, Justices.

Order of Affirmance—June 14, 1955

An appeal having been taken to this court by the defendant-appellant from a judgment of the Supreme Court, New York County, entered on the 22d day of June, 1954,

And said appeal having been argued by Mr. George B. Searls, of Counsel for the defendant-appellant, by Mr. Thomas A. Ryan of counsel for the plaintiff-respondent, by Mr. Samuel Anatole Lourie of counsel for respondents Hans Dietrich Schaefer, Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, and by Mr. Arthur J. O'Leary, Guardian ad Litem for the infant respondents in person, and due deliberation having been had thereon

345 It is unanimously ordered and adjudged that the judgment so appealed from be and the same hereby is, in all things, affirmed; and that the respondents recover of the appellant the costs of this appeal.

ENTER

GEORGE T. CAMPBELL, *Clerk*

APPELLATE DIVISION OF THE SUPREME COURT, FIRST JUDICIAL DEPARTMENT, CLERK'S OFFICE, COUNTY OF NEW YORK

I, GEORGE T. CAMPBELL, Clerk of the Appellate Division of the Supreme Court in the First Judicial Department, do hereby cer-

Office - Supreme Court, U. S.
FILED
JAN 23 1956
HAROLD B. WILLEY, Clerk

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In the Supreme Court of the United States

OCTOBER TERM, 1955

No. —

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, PETITIONER

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

The Solicitor General, on behalf of Herbert Brownell, Jr., Attorney General, as successor to the Alien Property Custodian, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of New York, New York County, dated July 5, 1955.

OPINIONS BELOW

The opinion of the Supreme Court of the State of New York, New York County (R. 338–339;

New York Law Journal, May 28, 1954, p. 7) is not officially reported. That court's findings of fact and conclusions of law appear at R. 150–168. Neither the Appellate Division, which affirmed, nor the Court of Appeals, which denied a motion for leave to appeal, wrote an opinion.

JURISDICTION

The first judgment of the Supreme Court, New York County, was entered on June 22, 1954 (Appendix, *infra*, pp. 21–29; R. 169–177). On June 14, 1955, the Appellate Division entered an order of affirmance (Order "A", following R. 343). On remittitur, the Supreme Court entered a further judgment dated July 5, 1955 (Appendix, *infra*, pp. 30–33; "C", following R. 343). On October 6, 1955, the Court of Appeals denied leave to appeal ("B", following R. 343). The jurisdiction of this Court is invoked under 28 U. S. C. 1257 (3).

QUESTION PRESENTED

By Vesting Order No. 4551, dated January 29, 1945, the Alien Property Custodian vested, under the Trading with the Enemy Act, "All right, title, interest and claim" of various individuals in and to the trust established in 1928 by an indenture between one Cobb and respondent Bank. The New York courts held that by such vesting petitioner, as successor to the Custodian, did not become entitled to receive the income of the trust or to exercise the powers over the trust given by the

indenture to the settlor. On April 6, 1953, petitioner amended the Vesting Order to *res* vest all property held by respondent Bank under said indenture, on a finding that it was property then and prior to January 1, 1947, owned or controlled by nationals of a designated enemy country (Germany).

The question is whether petitioner, by the amendment to the Vesting Order, became entitled to the immediate possession of the trust property.

STATEMENT

The trust involved in these proceedings was created in March, 1928, by an indenture signed by Charles L. Cobb and respondent (R. 21–53).[1] A judgment of the Supreme Court, New York County, entered February 17, 1939, determined that Bruno Reinicke, Jr., was the true creator or settlor of the trust and that Cobb had no interest in the trust and was not the real creator thereof (R. 10, 59, 61; 10 N. Y. S. 2d 420).

The indenture directed that respondent, as trustee, accumulate the income of the trust during the joint lives of Bruno Reinicke, Jr., and his wife Elisabeth, unless it received contrary instructions from the settlor (R. 22). Upon the death of the settlor and his wife, respondent was to divide the trust estate and accumulated in-

[1] Unless otherwise indicated, "respondent" refers to the bank and not to individual respondents.

come into as many equal shares as there should be surviving children of the settlor or descendants of deceased children, *per stirpes* (R. 24). Entire or partial payment of the shares of surviving children was to be made to them when they reached certain specified ages (R. 24–34).[2] Undistributed property held for a deceased child who died without descendants him surviving was to be paid to other descendants of the settlor, or, if none then existed, to the nephews and nieces of Bruno Reinicke, Jr. (R. 35–36).

The settlor reserved the powers: (a) to direct that loans of the trust property be made to him upon conditions prescribed by him (R. 22); (b) to direct that the entire income be paid to him or to another for the benefit of his children (R. 22–23); (c) to direct that one-half of the income be paid to him if he should move to the United States and notify respondent that he intended to become a resident thereof (R. 23); and (d) to vote capital stock owned by the trust (R. 38–39). The settlor also reserved to himself, and to his wife after his death, the powers to guide respondent in all matters of trust policy (R. 39–40) and to postpone or terminate any beneficial interest in the trust (R. 45–46).

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[2] There are three Reinicke children: Bruno Carl Reinicke, Robert Hans Reinicke, and Johanne Maria Reinicke Schaefer (R. 107). They were named as defendants in the trustee's complaint (R. 5) and are respondents here.

On January 29, 1945, the Alien Property Custodian, by Vesting Order No. 4551 (10 F. R. 1652), vested "all right, title, interest and claim" of Bruno Reinicke, Jr., his wife, his three living children, and any other child or children of Bruno, Jr., and Elisabeth Reinicke, and of a number of other persons listed in the Order, in and to the trust (R. 67–72).

After issuing this Vesting Order, the Alien Property Custodian intervened in an action respondent had brought in the Supreme Court, New York County, for construction of the trust indenture and for settlement of its accounts (R. 12). In November, 1946, the Attorney General was substituted for the Custodian as intervening defendant, and he filed a substitute answer asking that respondent be directed, upon the termination of the trust, to deliver to him the shares in the trust of the persons whose interests had been vested, and a decree that he had succeeded to certain powers over the trust (R. 12). The relief requested by petitioner was not granted; on January 30, 1948, a judgment was entered that petitioner was not entitled to receive any income from the trust, that he had not succeeded to the powers over the management and disposition of the trust which were lodged in Bruno Reinicke and his wife, and that he had no power to change the terms of the trust and confer upon himself rights superior to those of his predecessors in interest (R. 211–224 at 222–223).

On appeal, the Appellate Division, one judge dissenting, affirmed (R. 225–226, 229–230) on the ground that "the vesting order indicates no intention to appropriate fiduciary powers". *Chase National Bank of City of New York* v. *McGrath*, 276 App. Div. 831, 93 N. Y. S. 2d 724. The Court of Appeals affirmed (R. 227–228). *Chase National Bank of City of New York* v. *McGrath*, 301 N. Y. 602, 93 N. E. 2d 495.

On April 6, 1953, petitioner issued an order amending Vesting Order No. 4551 (R. 53–56). The amendment recited that after investigation it had been found that Bruno Reinicke, his wife, and the other persons named, and the descendants, heirs, and issue, names unknown, of certain of the persons named were, and had been prior to January 1, 1947, nationals of a designated enemy country (Germany), and that "All property in the possession, custody or control of the Chase National Bank of the City of New York, as trustee" under the 1928 indenture was property which was and prior to January 1, 1947, had been "owned or controlled by, * * * held on behalf of or on account of" said enemy nationals. Accordingly, the amendment declared:

> THERE IS HEREBY VESTED in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt

with in the interest of and for the benefit of the United States.[3]

Thereafter, respondent filed its complaint in this action, alleging, *inter alia,* that one of the defendants, Hans Dietrich Schaefer, a minor, has a vested interest in the trust fund; that another minor defendant has a contingent remainder interest; that other named defendants are minors under the age of 14; and that the vesting of the trust fund in 1953 was illegal. The complaint prayed a judgment approving respondent's account as trustee; that the court determine whether the principal of the trust should be transferred to petitioner; and that, if the court should order a transfer, respondent be allowed to retain certain reserves and that its costs and disbursements be paid (R. 7–58).

Petitioner's answer set up a claim of right arising under the Constitution, laws and authority of the United States, within the meaning of 28 U. S. C. 1257 (3). Petitioner averred that the sole relief and remedy from the 1953 amendment to the Vesting Order was that provided by the Trading with the Enemy Act (40 Stat. 411, 50 U. S. C. App. § 1 *et seq.*), and that the court was without jurisdiction to order the setting up of reserves. The answer prayed a judgment that

[3] The amendment was published in the Federal Register (18 F. R. 2052) and a certified copy was mailed to respondent in a letter dated April 15, 1953 (R. 57–58).

petitioner was entitled to immediate possession of the corpus of the trust and of all accumulations, and ordering respondent to account for and pay over the property to petitioner (R. 59–75).

Answers were also filed by a guardian *ad litem* for Hans Dietrich Schaefer, by the three children of Reinicke, and by a guardian *ad litem* for a number of defendants who were alleged to be minors (R. 76–85, 86–96, 96–97). All opposed the relief sought by petitioner and claimed that the 1953 amendment to the Vesting Order was illegal, contrary to law and to the judgment in the earlier litigation, and unconstitutional.

In an opinion filed at Special Term on May 28, 1954, the New York Supreme Court held that petitioner was not entitled to the relief requested in his answer on the ground that, "Whatever may be the difference between the original and the amended vesting orders the indisputable fact remains that there is at least one person now in being who is a United States citizen and who may well become entitled to the entire principal of this trust upon its termination" (R. 338).[4]

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[4] The court also filed findings and conclusions (R. 150–168) in which it found, *inter alia*, that petitioner had submitted to the jurisdiction of the court in the earlier suit and "a judgment has been made determining that the powers claimed by the Attorney General of the United States as successor to the Alien Property Custodian, over this trust are not vested in him and may not be exercised by the Attorney General" (R. 159); that the defendant Hans Dietrich Schaefer, born in August, 1953, may become entitled to the entire

Accordingly, on June 22, 1954, the court entered judgment directing respondent to retain the principal and accumulated income (R. 169–177). It also ordered the payment of fees to the guardians *ad litem* and payment of the costs and disbursements of the trustee (R. 176–177).

Petitioner thereupon appealed to the Appellate Division, challenging, *inter alia,* the denial of "the relief requested in the answer * * *" (R. 338). Petitioner's claim that he was entitled to the vested property as a matter of federal law was thereafter pressed upon the Appellate Division in brief and argument.[5] On June 14, 1955, that court affirmed without opinion.

A timely motion for leave to appeal was filed in the Court of Appeals. By affidavit and brief filed in support, petitioner again urged his federal claim of right.[6] The motion was denied on October 6, 1955.[7]

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principal of the said trust fund and the accumulated income thereof upon the termination of the said trust (R. 159); that the trust property "is not property payable or deliverable to or claimed by or held for or owned by any person" (R. 160); that the ultimate remaindermen are not ascertainable at this time (R. 160); that petitioner is not entitled to the possession of the corpus and respondent is entitled to continue to hold and administer it under the indenture (R. 161).

[5] A copy of the brief filed by petitioner in the Appellate Division has been lodged with the Clerk of this Court.

[6] Copies of the papers filed by petitioner in the Court of Appeals have also been lodged with the Clerk.

[7] On December 6, 1955, petitioner filed in the Supreme Court, New York County, a protective notice of appeal to

REASONS FOR GRANTING THE WRIT

The action of the New York courts in this case is irreconcilable with controlling decisions of this Court. It denies all effect to the rule, only recently reiterated in *Brownell* v. *Singer,* 347 U. S. 403, and *Zittman* v. *McGrath,* 341 U. S. 471, that when the Alien Property Custodian has *res* vested property under the Trading with the Enemy Act he becomes immediately entitled to possession of the property for administration under the Act. This rule is basic to administration of the Trading with the Enemy Act. It is particularly important that it should be recognized in the courts of New York where there is more litigation under the Act than in any other State.

1. In every relevant essential this case is indistinguishable from *Brownell* v. *Singer, supra,* and *Zittman* v. *McGrath, supra.* In *Singer,* the Alien Property Custodian originally issued an "excess proceeds" vesting order directed to the assets of the Yokohama Specie Bank in New York remaining after liquidation by the State Superintendent of Banks. In litigation subsequent to that vesting, in which the Alien Property Custodian and later the Attorney General (as his successor) appeared as *amicus,* Singer secured a judgment that

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this Court ("D", following R. 343). It appears clear, however, that the case falls under 28 U. S. C. 1257 (3), rather than under 28 U. S. C. 1257 (1), and that certiorari is the appropriate remedy.

he was a creditor of the New York Agency of that Bank. The New York Court of Appeals recognized that Singer's claim as a creditor fell within the federal "freezing" regulations, and it held that he could not obtain payment of his judgment without a license from the federal authorities. *Singer* v. *Yokohama Specie Bank,* 299 N. Y. 113, 85 N. E. 2d 894, affirmed *sub nom. Lyon* v. *Singer,* 339 U. S. 841.

Subsequent to that phase of the litigation, the Superintendent set up on his books a reserve to pay Singer's claim, if and when licensed. Thereafter, the Attorney General issued a turn-over directive requiring the Superintendent to deliver to him the fund so set up as a reserve. The Supreme Court of New York refused to authorize the Superintendent's transfer of the fund to the Attorney General on the grounds that to do so would nullify Singer's judgment and that in the earlier litigation the funds involved had been adjudicated to be non-enemy. *Matter of Yokohama Specie Bank, Ltd.,* 200 Misc. 610, 103 N. Y. S. 2d 228. On appeal, the New York courts affirmed. 280 App. Div. 970, 116 N. Y. S. 2d 926; 305 N. Y. 908, 114 N. E. 2d 469. On certiorari, this Court reversed in a *per curiam opinion,* 347 U. S. 403: "Reversed. *Zittman* v. *McGrath,* 341 U. S. 471."

In the instant case, the Custodian's 1945 vesting order (R. 67–72) was similar to the "right, title, and interest" vesting order in the first *Zitt-*

man case, 341 U. S. 446, and to the "excess proceeds" order in the first *Singer* case, 339 U. S. 841. By his 1945 order, the Custodian seized only the "right, title, interest and claim" of the persons named in that order and stepped into their shoes. *Zittman* v. *McGrath,* 341 U. S. 446; *Kahn* v. *Garvan,* 263 Fed. 909, 912–913 (S. D. N. Y.); *Miller* v. *Rouse,* 276 Fed. 715 (S. D. N. Y.). If the persons named in the order were not entitled to possession, the Attorney General was not.

By the 1953 amendment to the Vesting Order, the Attorney General made a different kind of seizure; he seized the *res* itself, just as was done by the turn-over directives in the second *Zittman* and *Singer* cases. 341 U. S. 471 and 347 U. S. 403. A seizure of a *res* is an entirely different thing from a seizure of the claim of the beneficiaries,[8] and the Attorney General, having determined to take over the administration of the fund, became entitled to immediate possession. "The power of the United States to take and administer the fund is paramount." *Zittman* v. *McGrath,* 341 U. S. 471, 474.

In the instant case, as in *Singer,* the New York appellate courts wrote no opinions. The trial court appears to have rested its refusal to honor the Vesting Order on two main grounds: (a) that

[8] See the two cases of *Zittman* v. *McGrath,* 341 U. S. 446 and 471; *Matter of Viscomi,* 270 App. Div. 732, 736, 60 N. Y. S. 2d 897; *Stern* v. *Newton,* 180 Misc. 241, 39 N. Y. S. 2d 593.

in the earlier litigation, to which the Attorney General was a party, it had been decided "that the powers claimed by the Attorney General of the United States as successor to the Alien Property Custodian, over this trust are not vested in him and may not be exercised by the Attorney General" (R. 159); and (b) that "there is at least one person now in being who is a United States citizen and who may well become entitled to the entire principal of this trust on its termination" (R. 338). Neither of these grounds provides a basis for denying effect to the federal seizure of the *res*.

a. It is unmistakably plain that the earlier proceedings in this case decided only that the Attorney General's 1945 vesting of the "right, title, interest and claim" of Bruno Reinicke did not entitle him to exercise the *fiduciary powers* which the trust indenture gave to the settlor. See R. 155–158, and 276 App. Div. 831, 93 N. Y. S. 2d 724. The earlier decision did not, of course, purport to adjudicate the power of the federal authorities to seize the *res*. That question was not then before the New York courts; the Attorney General did not attempt to exercise the power to *res* vest until he issued the 1953 amendment. An adjudication in 1948 as to the effect of one type of vesting order could not be binding as to the effect of a *res* vesting which was not issued until 1953. *Third National Bank of Louisville* v. *Stone*, 174 U. S. 432; *Utter* v. *Franklin*, 172 U. S. 416, 424; 30 Amer. Jur.

(1940), *Judgments*, § 206; 2 Freeman on *Judgments* (5th ed., 1925), § 712.

Moreover, since the sole relief from a vesting order is that afforded by the Trading With the Enemy Act (Trading With the Enemy Act, Sections 7 (c), 9 (a); *Clark* v. *Uebersee Finanz-Korp.*, 332 U. S. 480, 487; *Becker Co.* v. *Cummings*, 296 U. S. 74, 79), the Custodian, by submitting to the jurisdiction of the State court in the 1945–1948 litigation for purposes of securing a determination of the interest to which he succeeded by his "right, title and interest" vesting, could not waive the requirement that a challenge to a federal seizure of specific property may be tried only in accordance with the terms of the consent of the United States to be sued. *Minnesota* v. *United States*, 305 U. S. 382, 388–389; *United States* v. *Shaw*, 309 U. S. 495. Cf. *Lyons* v. *Westinghouse Electric Corporation*, 222 F. 2d 184, 188, 196 (C. A. 2), certiorari denied *sub nom. Walsh* v. *Lyons*, 350 U. S. 825.

In *Brownell* v. *Singer*, 347 U. S. 403, the New York courts similarly relied upon the decree antedating the *res* vesting order. *Matter of Yokohama Specie Bank*, 200 Misc. 610, 103 N. Y. S. 2d 228, 231. But this Court reversed the judgment of the State courts and ordered the *res* vesting order enforced.[9]

[9] In the courts below, the respondents argued that the Attorney General was bound by the 1948 judgment; and the

b. The second ground of the decision—that there is a "person [Hans Dietrich Schaefer] now in being who is a United States citizen and who may well become entitled to the entire principal of the trust upon its termination" (R. 338)[10]—is wholly insubstantial. The Attorney General found in the 1953 amendment to the Vesting Order that the property was "owned or controlled by" the enemy nationals named in the amendment, including Bruno Reinicke, Jr. It is well settled by the decisions of this Court that for purposes of the initial seizure and possession of the property the Custodian's determination of enemy ownership is "conclusive whether right or wrong". *Commercial Trust Co.* v. *Miller,* 262 U. S. 51, 53, 56; *Central Trust Co.* v. *Garvan,* 254 U. S. 554, 566, 568; *Becker Co.* v. *Cummings,* 296 U. S. 74, 79; *Stoehr* v. *Wallace,* 255 U. S. 239, 245; *Zittman* v. *McGrath,* 341 U. S. 471, 474. And it is

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Special Term found that in that litigation the Attorney General contended that the principal of the trust should be turned over to him (R. 155–156). But that contention was made on the basis of the 1945 "right, title, and interest" vesting, and did not involve the authority to seize the *res.* Surprisingly, the Special Term, while making the finding just mentioned, excluded the only evidence offered on the point, a copy of the Government's 1948 brief in the New York Court of Appeals (R. 197–199).

[10] Schaefer was held to have a contingent interest (R. 159). The contingency would be: (1) the deaths of Bruno Reinicke and his wife (Schaefer's grandparents); and (2) the deaths of Schaefer's mother and of his two uncles, without issue, all prior to the deaths of their parents (Bruno Reinicke and his wife) or, in the event they survived their parents, their failure to reach age 36.

equally clear that the claim of Schaefer may be asserted as against the vesting only under Section 9 (a) of the Act. *Clark* v. *Uebersee Finanz-Korp.*, 332 U. S. 480, 487; *Becker Co.* v. *Cummings, supra,* at 79; *Tiedemann* v. *Brownell*, 222 F. 2d 802, 804 (C. A. D. C.). If his claim amounts to a property right within the Fifth Amendment, it may be set up in a suit under that Section and there only.[11]

2. Two additional arguments made by respondents below may be briefly noticed. One is that with respect to property held in trust the power to vest is limited to the enemy interest. This is merely a variation of the old contention that enemy ownership must be adjudicated before the Custodian is entitled to the property—a contention rejected by this Court as long ago as *Stoehr* v. *Wallace*, 255 U. S. 239, 245. Section 7 (c) authorizes the seizure of "any * * * property", and Section 5 (b) the vesting of "any property"; there is nothing in the language of the Act to suggest a privileged position for property held in trust. The application of the seizure provisions to trusts has uniformly been sustained. See *Central Trust Co.* v. *Garvan*, 254 U. S. 554; *In*

[11] In some instances suits have been maintained under Section 9 (a) by trustees on behalf of remaindermen. See *United States Trust Co.* v. *Hicks*, 16 F. 2d 286 (S. D. N. Y.). In one case the contingent interest sued for was held to be a mere expectancy. *Koehler* v. *Clark*, 170 F. 2d 779, 783 (C. A. 9).

re Miller, 281 Fed. 764, 773 (C. A. 2), appeal dismissed *sub nom. Schaefer* v. *Miller*, 262 U. S. 760; *Central Hanover Bank & Trust Co.* v. *Markham*, 68 F. Supp. 829, 831 (S. D. N. Y.); *Keppelmann* v. *Palmer*, 91 N. J. Eq. 67, 108 Atl. 432, certiorari denied, 252 U. S. 581.

The other argument is that the 1953 amendment to the Vesting Order was a nullity because it was issued after the "end of the war" with Germany and hence was beyond the constitutional power to seize enemy property. But the Joint Resolution of October 19, 1951, which terminated the World War II "state of war" with Germany, expressly reserved from its operation any property or interest which, prior to January 1, 1947, was subject to vesting or seizure under the Trading with the Enemy Act, 65 Stat. 451. The reservation in the Joint Resolution of the authority to vest pre-1947 German property has been held to be within the power of Congress. *Ladue & Co.* v. *Brownell*, 220 F. 2d 468 (C. A. 7), certiorari denied, 350 U. S. 823. Cf. *National Savings & Trust Co.* v. *Brownell*, 222 F. 2d 395 (C. A. D. C.), certiorari denied, 349 U. S. 955. The war power may be exercised by statute or by treaty, and a clause providing for the setting aside of enemy property for subsequent seizure by way of reparations has been upheld in cases arising under treaties of peace. *Klein* v. *Palmer*, 18 F. 2d 932 (C. A. 2); and see *Codray* v.

Brownell, 207 F. 2d 610 (C. A. D. C.), certiorari denied, 347 U. S. 903.

CONCLUSION

The decision below fails to give effect to a seizure of specific property, duly ordered by the Attorney General pursuant to the powers vested in him under the Trading with the Enemy Act. It is in complete and direct conflict with decisions of this Court which have required recognition of the paramount power to make such a seizure. In the light of these decisions, it is respectfully submitted that this petition for a writ of certiorari should be granted and that the judgment below should be summarily reversed without further briefs or argument.

SIMON E. SOBELOFF,
Solicitor General.
DALLAS S. TOWNSEND,
Assistant Attorney General.
JAMES D. HILL,
GEORGE B. SEARLS,
Attorneys.

JANUARY 1956.

JUDGMENT

At a Special Term Part III, of the Supreme Court of the State of New York, Held in and for the County of New York, at the County Courthouse in Said County on the 15th Day of June 1954

Present—HONORABLE BENJAMIN F. SCHREIBER, *Justice*

County Clerk's No. 12138—1953

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, *Plaintiff*

—against—

BRUNO REINICKE, ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA REINICKE SCHAEFER, HANS DIETRICH SCHAEFER, KLAUS REINICKE, FRITZ REINICKE, GERTRUD ERNST, HANS EGON SCHWARZBURGER, HANS ULRICH SCHWARZBURGER, ELISABETH SCHWARZBURGER, CHRISTA SCHWARZBURGER, ILSE SCHWARZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE

SCHWARZBURGER, CHARLOTTE ROTT, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, BERND VOM BAUR, ROLAND ROTT, CHRISTOPH ROTT, ROSELORE KOSTER, formerly ROTT, TILO KOSTER, SITTA KOSTER and HERBERT BROWNELL, Jr., Attorney General of the United States, as Successor to the Alien Property Custodian, *Defendants*

The summons and complaint herein having been duly served upon the defendants herein and Arthur J. O'Leary, Esq. having been duly appointed guardian-ad-litem for the infant defendants Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Baur, Christoph Rott, Tilo Koster and Sitta Koster, and Anatole Samuel Lourie, Esq. having been duly appointed guardian-ad-litem for the infant defendant, Hans Dietrich Schaefer, and the said guardians-ad-litem having duly qualified as required by law and the said Arthur J. O'Leary as guardian-ad-litem for his said wards having answered the complaint herein, and Anatole Samuel Lourie, Esq. as guardian-ad-litem for his said ward having answered the complaint herein, and Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian having appeared generally by J. Edward Lumbard, Esq., United States Attorney, and an answer having been filed in behalf of the said Attorney General in which he demanded that it be adjudged and de-

creed that Herbert Brownell, Jr. Attorney General of the United States as Successor to the Alien Property Custodian is entitled to the immediate possession of the property comprising the net corpus of the trust created by said indenture of trust dated March 21, 1928, by and between Charles L. Cobb and The Chase National Bank of the City of New York as trustee, with all income, accumulated income and increments thereon in the possession of or under the control of the plaintiff herein, and the said Anatole Samuel Lourie, Esq. having appeared herein on behalf of the defendants, Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, and having answered the complaint herein, and none of the other defendants having appeared or answered the complaint or made a motion addressed to the sufficiency of the complaint herein and the said guardian-ad-litem having filed their respective reports; and after hearing the proofs and allegations of the parties and the decision in writing of the Court having been filed, and the account and supplemental account of the plaintiff as Trustee under the said indenture dated March 21, 1928 between Charles L. Cobb and The Chase National Bank of the City of New York having been filed and the objections of the defendant Herbert Brownell, Jr. Attorney General of the United States as Successor to the Alien Property Custodian having been overruled without objection thereto by counsel for the Attorney General and the Military Service Affidavit having been filed and notice of pendency of the action under Rule XIX of the Special Term Rules having been filed,

NOW, on motion of Thomas A. Ryan, Esq., attorney for the plaintiff, it is

ORDERED, ADJUDGED AND DECREED, as follows:

1. The plaintiff is entitled to judgment as hereinafter provided.

2. The relief requested in the answer of Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian, is hereby denied.

3. The plaintiff, The Chase National Bank of the City of New York, as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, is entitled to judgment to have its account judicially settled.

4. The plaintiff, The Chase National Bank of the City of New York, has duly accounted for all and singular its acts and proceedings as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York and for all of the property which came or should have come into its hands as such Trustee.

5. The account of the proceedings of The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, be and it hereby is judicially settled in all respects, and the acts and transactions and retention of investments of said Trustee therein set forth are in all respects approved.

6. The plaintiff, The Chase National Bank of the City of New York as Trustee under the Indenture dated the 21st day of March, 1928, be-

tween Charles L. Cobb and The Chase National Bank of the City of New York, is charged and credited as follows:

SUMMARY STATEMENT

(October 19, 1944 to May 8, 1953)

AS TO PRINCIPAL:

Charges		
Amount of all property on hand October 19, 1944, date of our last account as set forth in Schedule A---	$617,470.65	
Amount of all additional property received as set forth in Schedule A-1---	116,576.75	
Amount of all increases on the sale or disposition of property as set forth in Schedule B ----------	1,994.47	$736,041.87
Credits		
Amount of all decreases on the sale or disposition of property as set forth in Schedule B ----------	35,100.45	
Amount of all payments made for administration expenses as set forth in Schedule C ----------	13,795.64	
Amount of all funds transferred to income as set forth in Schedule D-----	5,311.24	54,207.33
Leaving a balance of------- consisting of property, as set forth in Schedule E.		$681,834.54

AS TO INCOME:

Charges		
Amount of all income on hand October 19, 1944, date of our last account	$21,478.58	
Amount of funds transferred from principal	5,311.24	
Amount of all income collected as set forth in Schedule F (Personal Property)	131,074.12	
Amount of all income as set forth in Schedule F-1 (real property)	3,034.15	$160,898.09
Credits		
Amount of losses upon sale of assets constituting invested income as set forth in Schedule I	20.52	
Amount of all payments made for administration expenses as set forth in Schedule G (personal property)	42,346.79	
Amount of all payments made for administration expenses as set forth in Schedule G-1 (real property)	1,501.29	
Amount of all funds transferred to principal as set forth in Schedule J	116,576.75	
Amount of accrued interest on purchase of securities to be subsequently refunded upon next interest date as set forth in Schedule H	62.36	160,507.71
Leaving an income cash balance of		$390.38

The foregoing principal balance of $681,834.54 consists of cash in the sum of $2,202.37 and other property on hand on May 8, 1953 having an inventory value of $679,632.17.

The said principal balance represents the inventory value of the cash and securities on hand in the principal account on May 8, 1953 and does not represent the market or actual value of the property held by the trustee or a sum of money or its equivalent for which the trustee is chargeable and is subject to trustee's commissions, legal fees and expenses of this accounting.

The foregoing income balance of $390.38 consists entirely of cash and is subject to trustee's commissions and expenses of this accounting.

SUMMARY STATEMENT

(From May 9, 1953 to August 4, 1953)

AS TO PRINCIPAL:		
Balance as shown in main account Schedule E		$681,834.54
Amount of all decreases as set forth in Schedule BB	$9.77	
Amount of all payments made for administration expenses as set forth in Schedule CC	12,623.35	
		12,633.12
		$669,201.42
AS TO INCOME:		
Balance as shown in main account		$390.38
Amount of income collected as set forth in Schedule FF	$5,088.68	
		5,088.68
		$5,479.06

The foregoing principal balance of $669,201.42 consists of cash in the sum of $21,579.02 and other property on hand on August 4, 1953 having an inventory value of $647,622.40, being the same securities set forth in Schedule E of the main account except $32,000.00 United States of America Treasury Certificate of Indebtedness Series "B" which has since matured.

7. The Chase National Bank of the City of New York is hereby directed to make the following payments out of the principal and accumulated income of the said trust:

To Arthur J. O'Leary, Esq. the sum of Thirty five ---------- hundred dollars ($3500.00/100) which is allowed to him for services as guardian-ad-litem herein.

To Samuel Anatole Lourie, Esq. the sum of Thirty five ---------- hundred dollars ($3500.-00/100) which is allowed to him for services as guardian-ad-litem herein.

To Samuel Anatole Lourie, Esq. the sum of Seven hundred and fifty dollars ($750.00/100) which is allowed to him for services as attorney for Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Marie Reinicke Schaefer.

To Thomas A. Ryan, Esq., The costs and disbursements of the plaintiff herein as taxed by the County Clerk who is hereby authorized to insert the amount thereof in this judgment, to wit, Dollars (422.10).

8. The Chase National Bank of the City of New York is hereby released, relieved and forever discharged of and from any and all liability or accountability as to all matters and things set

forth in the said account and supplemental account or embraced in the judgment to be entered herein or in any way related to the said trust or the administration thereof except as to its liability to account for the balance of income and principal remaining in its hands as such Trustee as shown by the said account and supplemental account.

9. The plaintiff is directed to retain the principal and accumulated income of the trust under the said Indenture dated March 21, 1928, as provided therein, and no payment of income, of principal or of accumulated income of the said trust shall be made to any beneficiary without 60 days' written notice to the Attorney General of the United States to be given by registered mail.

Enter

B. F. S.
J. S. C.

Entered: June 22, 1954.

ARCHIBALD R. WATSON,
Clerk.

JUDGMENT

SUPREME COURT: NEW YORK COUNTY

County Clerk's No. 12138–1953

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, *Plaintiff*

—against—

BRUNO REINICKE, ELISABETH REINICKE, BRUNO CARL REINICKE, ROBERT HANS REINICKE, JOHANNE MARIA REINICKE SCHAEFER, HANS DIETRICH SCHAEFER, KLAUS REINICKE, FRITZ REINICKE, GERTRUD ERNST, HANS EGON SCHWARZBURGER, HANS ULRICH SCHWARZBURGER, ELISABETH SCHWARTZBURGER, CHRISTA SCHWARTZBURGER, ILSE SCHWARTZBURGER ROTH, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARTZBURGER, SABINE SCHWARTZBURGER, CHARLOTTE ROTT, KARLA MARIA ROTT VOM BAUR, FRITZ VOM BAUR, GERD VOM BAUR, BERND VOM BAUR, ROLAND ROTT, CHRISTOPH ROTT, ROSELORE KOSTER, formerly ROTT, TILO KOSTER, SITTA KOSTER AND HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, *Defendants*

The above named defendant, Herbert Brownell, Jr., Attorney General of the United States

as Successor to the Alien Property Custodian, having appealed to the Appellate Division of the Supreme Court, First Department, from the judgment of the Supreme Court entered in the office of the Clerk of the County of New York on the 22nd day of June, 1954, granting judgment for the plaintiff and the said appeal having come on to be heard before the said Appellate Division and the said Appellate Division having duly made an order dated June 14, 1955, a certified copy of which, with the papers upon which the appeal was heard, was filed on June 17, 1955, in the Office of the Clerk of the County of New York by which it appears that the said Appellate Division has ordered unanimously that the said judgment so appealed from as aforesaid, be in all things affirmed with costs, and said costs having been duly taxed,

Now, on motion of Thomas A. Ryan, Esq., attorney for the plaintiff herein, The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York of 18 Pine Street, New York, N. Y., it is

ADJUDGED, that the judgment entered herein on the 22nd day of June, 1954, be and the same hereby is in all things affirmed and it is further

ADJUDGED, That the said The Chase National Bank of the City of New York as Trustee under Indenture dated the 21st day of March, 1928, between Charles L. Cobb and The Chase National Bank of the City of New York of 18 Pine Street, New York, New York, recover of the defendant

Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian of Washington, D. C., the sum of Two hundred eleven and 93/100 ---------- dollars ($211.93) the amount of its costs herein as taxed, and it is further

ADJUDGED, that the infant defendant-respondent herein, Hans Dietrich Schaefer by his guardian-ad-litem, Samuel Anatole Lourie, of 15 Broad Street, New York, N. Y. and defendants-respondents herein Bruno Carl Reinicke of 938 M/ ;3th Street, Manitowoc, Wisconsin; Robert Hans Reinicke, of 3210 W. Juneau Avenue, Milwaukee 8, Wisconsin and Johanne Maria Reinicke Schaefer of 4222 Clements, Detroit, Michigan, recover of the defendant Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian of Washington, D. C. the sum of One hundred twenty seven and 62/100 ---------- dollars ($127.62) the amount of their costs as taxed, and it is further

ADJUDGED, that the infant defendants-respondents herein, Hans Ulrich Schwarzburger, Elisabeth Schwarzburger, Christa Schwarzburger, Hans Adolf Roth, Heide Roth, Christel Roth, Eike Roth, Uwe Roth, Eckard Roth, Hans Eberhard Schwarzburger, Sabine Schwarzburger, Bernd Vom Bauer, Christoph Rott, Tilo Koster and Sitta Koster by their guardian-ad-litem Arthur J. O'Leary, Esq. of 70 Pine Street, New York, N. Y., recover of the defendant Herbert Brownell, Jr., Attorney General of the United States as Successor to the Alien Property Custodian of Washington, D. C. the sum of Ninety

and 53/100 dollars ($90.53) the amount of their costs as taxed.

Judgment signed and entered this 5th day of July, 1955.

ARCHIBALD R. WATSON,
Clerk.

BRIEF FOR THE PETITIONER

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 24

HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian, *Petitioner*

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, As Trustee Under Indenture Dated the 21st Day of March, 1928, Between Charles L. Cobb and the Chase National Bank of the City of New York, ET AL.

On Writ of Certiorari to the Supreme Court of the State of New York

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Supreme Court of the State of New York, New York County (R. 338-339; New York Law Journal, May 28, 1954, p. 7), is not officially reported. That court's findings of fact and conclusions of law appear at R. 150-168. Neither the Appellate Division, which affirmed, nor the Court of Appeals, which denied a motion for leave to appeal, wrote an opinion.

JURISDICTION

The first judgment of the Supreme Court, New York County, was entered on June 22, 1954 (R. 169-177). On June 14, 1955, the Appellate Division entered an order of affirmance (R. 344-345). On remittitur, the Supreme Court entered a further judgment dated July 5, 1955 (R. 347-348). On October 6, 1955, the Court of Appeals denied leave to appeal (R. 346). The jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTION PRESENTED

By Vesting Order No. 4551, dated January 29, 1945, the Alien Property Custodian vested, under the Trading with the Enemy Act, "all right, title, interest and claim" of various individuals in and to the trust established in 1928 by an indenture between one Cobb and respondent Bank. The New York courts held that by such vesting petitioner, as successor to the Custodian, did not become entitled to receive the income of the trust or to exercise the powers over the trust given by the indenture to the settlor. On April 6, 1953, petitioner amended the Vesting Order to *res* vest all property held by respondent Bank under said indenture, on a finding that it was property then and prior to January 1, 1947, owned or controlled or held on behalf of nationals of a designated enemy country (Germany).

The question is whether petitioner, by the amendment to the Vesting Order, became entitled to the immediate possession of the trust property.

STATUTES AND EXECUTIVE ORDERS INVOLVED

The relevant provisions of Sections 5(b), 7(c), and 9 of the Trading with the Enemy Act, as amended, of the Joint Resolution of October 19, 1951, and of Executive Order No. 9193, as amended, are set forth in the Appendix, *infra*, pp. 29-35.

STATEMENT

The Property Involved; the Trust Terms

The property which is the subject of this proceeding is held by respondent Chase National Bank of the City of New York[1] in trust under an indenture dated March 21, 1928, and signed by it and Charles L. Cobb (R. 21-53). The trust was created for the benefit of the children of Bruno Reinicke (R. 21), and Bruno Reinicke, not Cobb, was the real settlor of the trust and has the sole right of reversion of the assets of the trust (R. 237).

The terms of the indenture gave Reinicke extensive powers over the trust property.[2] He could order the trustee to make loans to beneficiaries upon such terms as he might establish (R. 22). He could direct the trustee to make loans to himself (Reinicke) in amounts up to eighty per cent of the trust property (R. 22). He could direct the trustee to pay all or part of the net income from the trust to any or all of the Reinicke children (R. 22-23). In specified circumstances, he

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[1] Unless otherwise indicated, "respondent" in this brief will refer to the Bank and not to individual respondents.

[2] His wife Elizabeth was to succeed to his powers on his death (R. 47). Bruno Reinicke and his wife are still living (R. 107).

could direct the payment of up to fifty per cent of the trust income to himself (R. 23).

Reinicke also retained power to supervise the trustee's investments and to guide other matters of trust policy (R. 38-39). The trustee was to render accounts to Reinicke (R. 43) and, upon Reinicke's request, to give him proxies to vote the securities held in the trust (R. 39). And Reinicke retained power to postpone or to advance the date of distribution of shares to the trust beneficiaries (R. 45-46).

Save to the extent that payment of income might be directed by the settlor, the indenture provided that the trustee was to accumulate income (R. 22). Upon the death of the survivor of Reinicke and his wife, Elizabeth, the trustee was to divide the trust estate and accumulated income into shares—one share for each surviving child of the Reinickes and one share for each deceased child who was represented by a living descendant or descendants (R. 24). The shares of the children were to be distributed to them upon their attaining specified ages.[3]

The indenture also provided, in substance, that in the event of a failure of direct descendants the trust property should be divided among the nephews and

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[3] In the case of the two Reinicke children who were in existence at the time the trust indenture was drawn (Bruno Carl, born in 1921, and Robert Hans, born in 1923, R. 47), it was provided that they should receive one fourth at age twenty-one and additional fourths at ages twenty-six, thirty-one, and thirty-six (R. 24-29). Children born after the date of execution of the indenture (1928) were to receive their shares at age twenty-one (R. 33-34). There is one child in this category, Johanne Maria Reinicke Schaefer, a daughter born in 1929 (R. 107, 253).

nieces of Reinicke then living, with the issue of any deceased nephew or niece taking the parent's share *per stirpes* (R. 35-36).[4]

The 1945 Vesting and the Ensuing Judicial Proceedings

On January 29, 1945, the Alien Property Custodian executed Vesting Order No. 4551, vesting in himself, as property of nationals of a designated enemy country (Germany), "[a]ll right, title, interest and claim" of Reinicke, his wife, his three living children, and any other child or children of Bruno and Elizabeth Reinicke, and of a number of other persons listed in the Order, in and to the trust (R. 67-72).

After issuing this Vesting Order, the Custodian intervened in an action which respondent Bank had brought in the Supreme Court, New York County, for construction of the trust indenture and for settlement of its accounts (R. 12, 212-213). In November, 1946, the Attorney General was substituted for the Custodian as intervening defendant, and he filed a substitute answer asking (1) that respondent be directed to deliver to him, upon termination of the trust, the shares in the trust of the persons whose interests had been vested; and (2) that the court decree that he had succeeded to certain powers over the trust (R. 12).[5]

The New York court denied the relief requested by the Attorney General. By a judgment dated

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[4] If there were no direct descendants, or nephews or nieces, or descendants of nephews or nieces, the property was, to go to Reinicke's heirs as determined under Illinois law.

[5] By Executive Order No. 9788 (11 F.R. 11981), the functions and powers of the Alien Property Custodian were transferred to the Attorney General.

January 30, 1948, it settled the trustee's accounts (R. 215) and held that respondent was authorized to administer the trust in its discretion while Reinicke's powers remained "subject to blocking or other Governmental control either of this country or of any government in Germany" (R. 221). The court also held that the Attorney General was not entitled to receive the income of the trust during the life of Reinicke; that he had not succeeded to Reinicke's "powers over the management of the trust fund" or to Reinicke's power "to direct the payment of income," these being "personal" powers, and that he had no power to change the terms of the trust indenture (R. 223).

On appeal, the Appellate Division, one judge dissenting, affirmed (R. 225-226, 229-230), on the ground that "[t]he vesting order indicates no intention to appropriate fiduciary powers." *Chase National Bank of the City of New York* v. *McGrath*, 276 App. Div. 831, 93 N.Y.S. 2d 724. The Court of Appeals affirmed. *Chase National Bank of City of New York* v. *McGrath*, 301 N.Y. 602, 93 N.E. 2d 495.

The 1953 Vesting and the Further Judicial Proceedings

On April 6, 1953, petitioner issued an "Amendment to Vesting Order 4551" (R. 72-75). The Amendment recited that after investigation it had been found that Bruno Reinicke, his wife, his children, and the other persons named, and the descendants, heirs, and issue, names unknown, of certain of the persons named, were, and had been prior to January 1, 1947, nationals of a designated enemy country (Germany), and that "[a]ll

property in the possession, custody or control of the Chase National Bank of the City of New York, as trustee" under the 1928 indenture was property which was and prior to January 1, 1947, had been "owned or controlled by, . . . held on behalf of or on account of" said enemy nationals.[6] The described property was declared "vested in the Attorney General of the United States . . ." (R. 75).

Thereafter, respondent filed its complaint in the Supreme Court, County of New York, alleging, *inter alia*, that one of the defendants, Hans Dietrich Schaefer, a minor and an American citizen, had a vested interest in the trust fund;[7] that another minor defendant had a contingent remainder interest; that other named defendants were minors; and that the vesting of the trust fund in 1953 was illegal. The complaint prayed that the court enter a judgment approving respondent's account as trustee; that the court determine whether the principal of the trust should be transferred to petitioner; and that, if the court should order a transfer, respondent be allowed to retain certain reserves and to receive payment of its costs and disbursements (R. 7-58).

Petitioner's answer set up the vesting of the trust corpus by the Amendment to Vesting Order No. 4551; averred that the sole relief and remedy from the said Amendment was that provided by the Trading with

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[6] The Amendment was published in the Federal Register (18 F.R. 2[illegible]) and a certified copy was mailed to respondent in a letter dated April 15, 1953 (R. 57-58).

[7] Hans Dietrich Schaefer, a son of Reinicke's daughter Johanne, was born in this country in 1953 (R. 253).

the Enemy Act; and that the court was without jurisdiction to order the setting up of reserves. The answer prayed a judgment that petitioner was entitled to immediate possession of the corpus of the trust and of all accumulations, and ordering respondent to account for and pay over the property to petitioner (R. 59-75).

Answers were also filed by a guardian *ad litem* for Hans Dietrich Schaefer, by the three children of Reinicke, and by a guardian *ad litem* for a number of defendants who were alleged to be minors (R. 76-85, 86-96, 96-97). All opposed the relief sought by petitioner and claimed that the 1953 Amendment to the Vesting Order was illegal, contrary to the judgment in the earlier litigation, and unconstitutional.

In an opinion filed at Special Term on May 28, 1954, the New York Supreme Court held that petitioner was not entitled to the relief he requested. It declared (R. 338):

> Whatever may be the difference between the original and the amended vesting orders the indisputable fact remains that there is at least one person now in being who is a United States citizen and who may well become entitled to the entire principal of this trust upon its termination.

In its "Decision" filed June 15, 1954, the Court found as a fact that the person in question, Hans Dietrich Schaefer, has a contingent interest in the trust fund (R. 159). It also found, *inter alia*, that petitioner had submitted to the jurisdiction of the court in the earlier suit and "a judgment has been made determining that the powers claimed by the Attorney General of the United States as successor to the Alien Property

Custodian, over this trust are not vested in him and may not be exercised by the Attorney General" (R. 159); that the trust property "is not properly payable or deliverable to or claimed by or held for or owned by any person" (R. 160); that the ultimate remaindermen are not "ascertainable . . . at this time" (R. 160); that petitioner is not entitled to the possession of the corpus and respondent is entitled to continue to hold and administer it under the indenture (R. 161).

On June 22, 1954, the court entered judgment directing respondent to retain the principal and accumulated income (R. 169-177). It also ordered the payment of fees to the guardians *ad litem* and payment of the costs and disbursements of the trustee (R. 176-177).

Petitioner thereupon appealed to the Appellate Division, challenging the denial of "the relief requested in the answer" (R. 3). On June 14, 1955, that court affirmed without opinion (R. 344). *Chase National Bank of City of New York* v. *Reinicke*, 286 App. Div. 808, 143 N.Y.S. 2d 623. A motion by petitioner for leave to appeal to the Court of Appeals of New York was denied by that court on October 6, 1955 (R. 346). *Chase National Bank of the City of New York* v. *Reinicke*, 129 N.E. 2d 790.

SUMMARY OF ARGUMENT

1. The 1953 Amendment to the 1945 Vesting Order constituted a *res* vesting and entitled petitioner to summary relief directing delivery of the described property. *Zittman* v. *McGrath*, 341 U.S. 471; *Brownell*

v. *Singer*, 347 U.S. 403. The language of the Trading with the Enemy Act and of the Executive Order issued pursuant thereto authorized the vesting of the corpus of the trust and not merely of the enemy interests. *Stoehr* v. *Wallace*, 255 U.S. 239, 245; *Kahn* v. *Garvan*, 263 Fed. 909, 914 (S.D.N.Y.). For purposes of the present right to possession, the findings in the 1953 Order are conclusive. *Commercial Trust Co.* v. *Miller*, 262 U.S. 51, 53. Thus, when that Order was issued it became the duty of respondent to deliver the property. And petitioner was entitled to enforcement of that obligation in the New York courts. *Brownell* v. *Singer*, *supra*.

2. It was within the constitutional authority of Congress under the war power to authorize the 1953 vesting even after the termination of the technical "state of war" with Germany. *Commercial Trust Co.* v. *Miller*, 262 U.S. 51, 57; *LaDue & Co.* v. *Brownell*, 220 F. 2d 468 (C.A. 7), certiorari denied, 350 U.S. 823. The war power may be exercised after the war to deal with the problems arising out of the war (*Hamilton* v. *Kentucky Distilleries Co.*, 251 U.S. 146) and to authorize the postwar seizure of property that was enemy during the war. *Codray* v. *Brownell*, 207 F. 2d 610 (C.A.D.C.), certiorari denied, 347 U.S. 903; *Klein* v. *Palmer*, 18 F. 2d 932 (C.A. 2).

3. The earlier 1948 judgment of the New York court, interpreting the 1945 vesting order, did not bar the enforcement in 1953 of a subsequent *res* vesting, for all that was in question in the earlier suit was the rights of the Attorney General under a "right, title, and interest" vesting whereby he stepped into the

shoes of the persons named in the order. *Zittman* v. *McGrath,* 341 U.S. 446, 463-464. The "causes of action" in 1948 and in 1953 were different. In 1948, the Attorney General claimed in the right of the persons named in the 1945 Order, while by the 1953 Order he made a direct seizure of the *res.* The right to seize the *res* was not, nor could it have been, adjudicated in the prior proceeding. *Cromwell* v. *County of Sac,* 94 U.S. 351, 352-353; *Brownell* v. *Singer,* 347 U.S. 403.

That there may be an outstanding, contingent, non-enemy interest in the trust property is irrelevant from the standpoint of petitioner's present right to possession. The exclusive remedy of those who claim non-enemy interests in vested property is a suit for recovery pursuant to Section 9(a) of the Act. *Becker Co.* v. *Cummings,* 296 U.S. 74. There is no question of the adequacy of that remedy since Section 9(a) is broad enough to cover all property interests within the protection of the Fifth Amendment. *Ibid.*

ARGUMENT

I. The Attorney General Is Authorized to Take Over and Administer the Fund in Suit in Accordance With the Trading With the Enemy Act. *Zittman* v. *McGrath,* 341 U.S. 471, and *Brownell* v. *Singer,* 347 U.S. 403, are Directly in Point and Controlling

The property in suit, which was vested by the 1953 Amendment to Vesting Order No. 4551,[8] consists of:

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[8] The 1953 Order (R. 53-56) was designated as an "amendment" to the 1945 Vesting Order No. 4551 (R. 67-72), since it related to the same trust. It is clear from the language of the amendment, however, that it was, in and by itself, a distinct and independent act of seizure under the statute.

> All property in the possession, custody or control of the Chase National Bank of the City of New York, as trustee under a certain indenture of trust dated March 21, 1928, between Charles L. Cobb and the Chase National Bank of the City of New York, as subsequently amended, subject to expenses of administration. [R. 54-55]

This was an identifiable and identified fund, a *res*. The decisions of this Court under the original Trading with the Enemy Act of 1917 have long settled that such an act or declaration of seizure entitles the Alien Property Custodian to immediate possession of the *res* and to summary judicial relief when delivery of possession is refused. *Central Trust Co.* v. *Garvan*, 254 U.S. 554, 567; *Stoehr* v. *Wallace*, 255 U.S. 239, 245; *Commercial Trust Co.* v. *Miller*, 262 U.S. 51, 53; *Gt. Northern Ry.* v. *Sutherland*, 273 U.S. 182; *Becker Co.* v. *Cummings*, 296 U.S. 74, 79. This is equally true of *res* vestings made under the Act as amended in World War II. *Silesian-American Corporation* v. *Clark*, 332 U.S. 469; *Cities Service Co.* v. *McGrath*, 342 U.S. 330; *Orvis* v. *Brownell*, 345 U.S. 183, 186.

Most recently, the rule has been applied, in circumstances closely paralleling the case at bar, in *Brownell* v. *Singer*, 347 U.S. 403. In *Singer*, the Superintendent of Banks of the State of New York, in possession of the assets of the New York Agency of the Yokohama Specie Bank, set up on his books a reserve for the payment of the claim of Singer, if and when it became payable. Singer's claim had been previously established under New York law in litigation in which the United States appeared as *amicus curiae*. The

New York courts had recognized, however, that the claim could not actually be paid without a license from the Secretary of the Treasury. *Singer* v. *Yokohama Specie Bank,* 299 N.Y. 113, 85 N.E. 894, affirmed, *sub. nom. Lyon* v. *Singer,* 339 U.S. 841. Subsequent to that litigation and the establishment of the reserve, the Attorney General, exercising his powers under the Trading with the Enemy Act, issued a "turn-over directive" requiring the Superintendent to pay over to him the fund set up as a reserve. On a petition by the Superintendent for instructions, the Supreme Court of New York refused to authorize a transfer of the fund to the Attorney General on the grounds that to do so would nullify Singer's judgment and that in the earlier litigation the fund involved had been adjudicated to be non-enemy. *Matter of Yokohama Specie Bank, Ltd.,* 200 Misc. 610, 103 N.Y.S. 2d 228. On appeal, the New York appellate courts affirmed. 280 App. Div. 970, 116 N.Y.S. 2d 926; 305 N.Y. 908, 114 N.E. 2d 469. This Court reversed, *per curiam,* citing *Zittman* v. *McGrath,* 341 U.S. 471.

The essential situation in the cited *Zittman* case (*Zittman No. 2*) was as follows. American creditors of German nationals had attached the latter's blocked assets deposited in New York banks and had proceeded to judgment against them in the New York courts.[9] This Court held that the Custodian, upon his subsequent issuance of a turnover directive, had "power to possess himself of [the] funds and to administer

[9] As in the *Singer* litigation, the New York courts had recognized that satisfaction of the judgments would require a federal license.

them"; that "[t]o hold otherwise would be incompatible with the federal program"; and that all asserted rights and priorities of the judgment creditors would have to be determined in proceedings instituted pursuant to the provisions of the Trading with the Enemy Act. 341 U.S. at 473-474.[10]

In the instant case, the 1953 "res" vesting had the same effect as the turnover directives issued in *Singer* and in *Zittman No. 2*. See, also, *Matter of Yokohama Specie Bank*, 188 Misc. 137, 141, 66 N.Y.S. 2d 289, 293; *In re Young's Estate*, 204 Misc. 92, 118 N.Y.S. 2d 803. Here, as there, we have a finding that specific described property is enemy owned or controlled and an express determination (see R. 55) that it should be administered by the United States. Here, no less than there, "[t]he power of the United States to take and administer the fund is paramount." *Zittman No. 2*, 341 U.S. at 474.

Respondents have contended that, in the case of property held in trust, the United States may vest only the enemy "interest." This is a variation of the argument that enemy ownership must be adjudicated before the Custodian is entitled to possession, a contention rejected by this Court as long ago as *Stoehr* v. *Wallace*, 255 U.S. 239, 245. The contention not only lacks foundation in the statute; it is contrary to its plain language. Section 7(c) of the original Act (*infra*, p. 30) comprehensively authorizes the seizure

[10] In the companion *Zittman* v. *McGrath* case, 341 U.S. 446 (*Zittman No. 1*), which involved a "right, title and interest" vesting, as distinguished from a seizure of the *res*, the Court held, contrariwise; that the Custodian had not asserted his possessory powers.

of "any . . . property" determined to be held "for . . . or on behalf of, or for the benefit of an enemy"—language certainly encompassing property held in trust, *Kahn* v. *Garvan,* 263 Fed. 909, 914 (S.D.N.Y.). The wording of amended Section 5(b) (*infra,* p. 29) is equally broad, authorizing the vesting of "any property," without qualification as to the terms on which it is held. Executive Order 9193 (*infra,* p. 34), promulgated by the President in 1942 in implementation of Section 5(b), specifically authorizes the Custodian to vest, *inter alia,* "[a]ny property of any nature whatsoever which is in the process of administration by any person acting under judicial supervision."

Held in trust or otherwise, the simple fact is that the bonds and stock certificates in respondent's hands (see R. 260-275) are property and are within the Act. Nothing in the statute or the decided cases suggests that the contract of a trust indenture will render property immune from seizure. Cf. *Norman* v. *B. & O. R. Co.,* 294 U.S. 240, 308. As this Court has emphasized, the forms of ownership are immaterial, since it is the basic purpose of the Act to enable the Custodian to reach and take control of any property tainted by an enemy interest *Clark* v. *Uebersee Finanz-Korp.,* 332 U.S. 480, 484-486.

In point of fact, countless seizures under the Act sustained by this and other courts have involved property held by fiduciaries, including trustees. See, *e.g., Central Trust Co.* v. *Garvan,* 254 U.S. 554; *Commercial Trust Co.* v. *Miller,* 262 U.S. 51; *Farmers' Loan & Trust Co.* v. *Hicks,* 9 F. 2d 848 (C.A. 2),

certiorari denied, 269 U.S. 583; *Central Hanover Bank & Trust Co.* v. *Markham,* 68 F. Supp. 829, 831 (S.D.N.Y.); *Keppelmann* v. *Palmer,* 91 N.J. Eq. 67, 108 Atl. 432, certiorari denied, 252 U.S. 581; *Application of Alien Property Custodian of U.S.,* 270 App. Div. 732, 60 N.Y.S. 2d 897; *Matter of Daly,* 189 Misc. 680, 74 N.Y.S. 2d 711.

Since the property identified in the *res* vesting order was plainly subject to the vesting power, and since the correctness of the Custodian's finding that the property is "enemy" in character is challengeable only in a suit for recovery brought under Section 9(a) (*infra,* p. 31),[11] respondent was under a duty to deliver possession. *Central Trust Co.* v. *Garvan,* 254 U.S. 554, 567; *Miller* v. *Lautenburg,* 239 N.Y. 132, 145 N.E. 907. And this obligation was one which petitioner was entitled to enforce in the state courts, their ordinary procedures being competent to give the relief sought. *Brownell* v. *Singer,* 347 U.S. 403; *United States* v. *Bank of New York,* 296 U.S. 463, 479; *Wasservogel* v. *Meyerowitz,* 300 N.Y. 125, 89 N.E. 2d 712; *Fleming* v. *Russell,* 296 N.Y. 985, 73 N.E. 2d 565. Cf. *Testa* v. *Katt,* 330 U.S. 386.

II. The 1953 Order of the Attorney General Was Authorized by the Joint Resolution of October 19, 1951, and That Resolution Was Constitutional

The authority of the Attorney General to make a new seizure in 1953 of a distinct property interest, the

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[11] For purposes of obtaining possession of vested property, the Custodian's findings, this Court has stated, are conclusive, "whether right or wrong." *Commercial Trust Co.* v. *Miller,* 262 U.S. 51, 53.

res, was within the Joint Resolution of October 19, 1951 (65 Stat. 451, *infra,* p. 33).[12] That Resolution terminated the state of war with Germany for most purposes, but provided that property which, prior to January 1, 1947, was "subject to vesting or seizure" under the Act, should continue to be subject to the provisions of the Act as if the Resolution had not been adopted.[13] That is, it reserved and continued in effect after its date the authority to vest German property which had been subject to vesting up to January 1, 1947. *LaDue & Co.* v. *Brownell,* 220 F. 2d 468 (C.A. 7), certiorari denied, 350 U.S. 823.

The authority to vest pre-1947 German property was continued in effect in order to enable the United States to carry out the commitments it had made to war claimants in the War Claims Act of 1948 (62 Stat. 1240) and its engagements with its allies in regard to reparations and German "external" assets. See Senate Report No. 892, 82d Cong., 1st Sess., p. 6; 97 Cong. Rec. 7762.[14] By the same token, it furthered

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[12] The New York courts did not question the continued existence of the federal vesting power, although the individual respondents challenged the constitutionality of the Amendment to the Vesting Order (R. 82, 84, 93, 95). The same respondents urge the point in their brief in opposition to certiorari (pp. 9-10) as a ground for affirmance.

[13] In his 1953 Amendment to the Vesting Order, the Attorney General found that the trust property here involved "is property which is and prior to January 1, 1947, was within the United States owned or controlled by . . . held on behalf of" nationals of Germany (R. 55).

[14] The engagements with our allies were contained in the "Agreement on Reparation from Germany," effective January 14, 1946 (61 Stat. 3157), and the Brussels Agreement, (18 Dept. of State Bull. 6), confirmed by Section 40 of the Act. (64 Stat. 1079).

an important purpose of the Trading with the Enemy Act: the use of enemy property to pay claims of the United States and its citizens for expenses and losses occasioned by the war. See *Cummings* v. *Deutsche Bank,* 300 U.S. 115; *Propper* v. *Clark,* 337 U.S. 472, 484. Cf. *Ware* v. *Hylton,* 3 Dall. 199, 227.

Such a continuation of the vesting authority was within the war powers of Congress under the Constitution. The war powers are not cut off short at the moment of the making of peace. *Woods* v. *Miller Co.,* 333 U.S. 138; *Ludecke* v. *Watkins,* 335 U.S. 160. And those powers may be exercised after the formal termination of war to deal with the problems directly arising out of the war. *Hamilton* v. *Kentucky Distilleries Co.,* 251 U.S. 146. As of October, 1951, the war claims of Americans were still unpaid, and it was altogether reasonable to devote to that purpose a portion of the enemy assets still within reach of the United States, though not yet vested. During the state of war, the power of Congress over enemy property in the United States was complete. *United States* v. *Chemical Foundation,* 272 U.S. 1, 11; *Cummings* v. *Deutsche Bank,* 300 U.S. 115, 120. Without a hearing and without compensation, Congress, on October 18, 1951, could have enacted a statute transferring to the United States, or to any agency of the United States, title to all German property within our reach, without calling upon any executive agency to act by way of seizure. Cf. *Bowles* v. *Willingham,* 321 U.S. 503, 517, 519. Collection of the property and reduction to possession could have been left to a subsequent date, as was done in World War I when demands served

before July 2, 1921, were enforced after that date. See *Application of Miller*, 288 Fed. 760, 766 (C.A. 2); *In re Miller*, 281 Fed. 764, 773 (C.A. 2), appeal dismissed, *sub nom. Schaefer* v. *Miller*, 262 U.S. 760. Instead, by the Joint Resolution, Congress set aside a portion of the German property for future vesting by the Executive.

A similar course was followed for a brief period after World War I. The Joint Resolution approved March 3, 1921 (41 Stat. 1359), terminated the effectiveness of other war legislation, but continued in effect the Trading with the Enemy Act and several other statutes.[15] This Court approved, *Commercial Trust Co.* v. *Miller*, 262 U.S. 51, 57, stating that

> . . . the power which declared the necessity [of war] is the power to declare its cessation, and what the cessation requires. The power is legislative. A court cannot estimate the effects of a great war and pronounce their termination at a particular moment of time, and that their consequences are so far swallowed up that legislation addressed to its emergency had ceased to have purpose or operation with the cessation of the conflicts in the field.

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[15] Shortly thereafter, on July 2, 1921, Congress terminated the "state of war" with Germany, without attempting to continue the power to make further seizures. Joint Resolution of July 2, 1921, 42 Stat. 105. That Joint Resolution reserved, however, the authority to reduce to possession property which had already been seized by the service of an instrument termed a "demand." See discussion in text, *supra*, pp. 18-19. And see, also, *Sutherland* v. *Guaranty Trust Co.*, 11 F.2d 696, 698 (C.A. 2); *Miller* v. *Rouse*, 276 Fed. 715 (S.D.N.Y.).

See, also, *National Savings & Trust Co.* v. *Brownell*, 222 F. 2d 395 (C.A.D.C.), certiorari denied, 349 U.S. 955.

A similar application of the war power is found in the cases dealing with treaties of peace. A provision for the continuation after the war of the authority to seize enemy property is a familiar one in such treaties; it is a part of the process of terminating the war. Such provisions were included in the 1951 Treaty with Japan (reprinted in U.S. Code Congressional & Administrative Service, Vol. 2, pp. 2730-2748), and in the 1947 Treaties with Italy (61 Stat. 1245), Bulgaria (61 Stat. 1915), Hungary (61 Stat. 2109), and Rumania (61 Stat. 1757). The validity of the provision in the Treaty with Hungary was upheld in *Codray* v. *Brownell*, 207 F. 2d 610 (C.A.D.C.), certiorari denied, 347 U.S. 903, and the clause was implemented by Public Law 285, 84th Cong., approved August 9, 1955 (69 Stat. 562). A similar provision in the 1921 Treaty of Peace with Germany (42 Stat. 1939) was upheld as an exercise of the war power. *Klein* v. *Palmer*, 18 F. 2d 932 (C.A. 2).

III. Nothing in the Judgments of the New York Courts Bars Petitioner's Right to Possession of the Property

A. The 1948 Judgment Did Not Adjudicate That Right

The New York Supreme Court appears to have rested its decision in part upon the theory that the issues presented here had been adjudicated in the earlier litigation, for it "found" in its Decision that the Attorney General had submitted to the jurisdiction of the court in the earlier action and that judgment

had been entered determining that the powers claimed by the Attorney General were not vested in him and might not be exercised by him (R. 159).[16]

But certainly the authority of the Custodian or of the Attorney General to *res* vest the trust corpus was not adjudicated by the 1948 judgment. As of that date all that had been vested was the "right, title, interest and claim" of Bruno Reinicke and of the other persons named and described in the 1945 Vesting Order (R. 67-72). True, the court found that in the earlier suit the Attorney General requested that the "entire principal of the said trust should be transferred to the Attorney General as Successor to the Alien Property Custodian on the ground that all interests in the trust had vested in the Attorney General by said vesting order #4551" (R. 155-156); but, as the quoted language shows, that request in the earlier suit was based on the vesting of designated "interests", and not on any claim that the Attorney General had vested the corpus.

The most that could have been decided in the prior suit was that under the 1945 "right, title, and interest" Vesting Order the Attorney General, having taken over the interests of Bruno Reinicke and the other persons named, was not thereby entitled to immediate possession of any of the property because the beneficiaries whose interests he had vested were not so entitled; and that the Attorney General had not

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[16] The language of this finding was taken from the complaint (R. 16.) In the answers filed on behalf of respondents Schaefer and Bruno Carl Reinicke, et al., the 1948 judgment was pleaded as *res judicata* (R. 83, 93-94).

thereby acquired the "personal powers" over the trust property which the indenture reserved to Reinicke. See R. 156-158, and the opinion of the Appellate Division, 276 App. Div. 831, 93 N.Y.S. 2d 724.[17] By a "right, title, and interest" vesting the Custodian merely steps into the shoes of the nationals whose interests he vests and he gets no more than they had. *Zittman* v. *McGrath* (*Zittman No. 1*), 341 U.S. 446, 463-464; *Kahn* v. *Garvan*, 263 Fed. 909, 912-913 (S.D.N.Y.); *Miller* v. *Rouse*, 276 Fed. 715 (S.D.N.Y.); *Stern* v. *Newton*, 180 Misc. 241, 39 N.Y.S. 2d 593, 598. The vesting of the right, title, and interest of named beneficiaries does not depend upon or necessarily include a vesting of the *res* itself. Hence, a judgment as to the effect of a "right, title, and interest" vesting does not bar a subsequent taking of the *res*. The claims or "causes of action" are different. *Cromwell* v. *County of Sac*, 94 U.S. 351, 352-353; *Tait* v. *Western Md. Ry. Co.*, 289 U.S. 620, 623; *Commissioner of Internal Revenue* v. *Sunnen*, 333 U.S. 591, 597.[18]

Respondent suggests in its brief in opposition

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[17] We note parenthetically that this is plainly not a situation in which the holding of *res judicata* could be said to represent merely a state-law determination. The right of the Custodian under a *res* vesting could not have been determined in the prior suit involving the "interest" vesting if there are material differences in the two types of vestings. Whether there are such differences is purely a federal question and, as indicated in the text, this Court has answered that question in the affirmative.

[18] See, also, *Third National Bank of Louisville* v. *Stone*, 174 U.S. 432, 434; *Utter* v. *Franklin*, 172 U.S. 416, 424; *Matter of Mullane* v. *McKenzie*, 269 N.Y. 369, 377, 199 N.E. 624, 625; *Rose* v. *Hawley*, 133 N.Y. 315, 31 N.E. 236, 237; 2 *Freeman on Judgments* (5th ed., 1925), § 712.

(p. 5) that the finding of the court, in the earlier suit, that the persons entitled to principal and interest could not be determined until the trust terminated in some way barred the 1953 *res* vesting of the property as being "owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to" enemy nationals (R. 55). But it does not follow from the fact that the remaindermen who would ultimately be entitled to distribution of the trust estate cannot now be surely identified that there are no enemy interests in the property within the meaning of the Trading with the Enemy Act. And, most assuredly, it does not follow that there was no enemy control.

On the findings in the 1953 Order (R. 54), Bruno Carl Reinicke, Robert Hans Reinicke, and the others were, between December 11, 1941, and January 1, 1947, nationals of a designated enemy country (Germany); to the extent that they had interests under the trust, vested or contingent, by way of life estate or by way of remainder, the property would be held "for . . . or on behalf of or for the benefit of" such nationals. See *Kahn* v. *Garvan*, 263 Fed. 909, 914 (S.D.N.Y.). The anomaly is that respondent would suggest, on the one hand, that the more immediate interests in the trust property—those of the settlor, his wife and his children (all German nationals)—are too indeterminate to provide a basis for seizure of the property as "enemy"; yet, on the other hand, it urges (and the New York Supreme Court held) that the contingent interest of one American-born Reinicke grandchild, an interest considerably more remote, is sufficiently viable to pose an obstacle to seizure. Both notions

rest on the same basic misconception—failure to recognize that property in which there are enemy interests may be seized irrespective of whether those interests encompass the entire bundle of ownership rights and irrespective of whether there are non-enemy interests intermixed.[19] As previously emphasized, the Custodian's power is sufficient to reach all property in which there is enemy taint. *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480. In this case, of course, there is no question that the enemy interests overwhelmingly predominate.

Moreover, ownership interests apart, it seems perfectly clear that the trust property was subject to federal seizure since the trust indenture placed substantial powers of management, control and disposition in the hands of the enemy settlor.[20] *Clark* v. *Uebersee Finanz-Korp., supra.* And see *Uebersee Finanz-Korp.* v. *McGrath,* 343 U.S. 205, 211. It is no answer that the provisions for the trustee's administration made by the New York courts contemplate that, for the present, respondent will act in the exercise of its own discretion, free from the settlor's direction. In the face of a specific assertion of the federal power to seize designated enemy-controlled property, the state courts may not interpose a substitute custodianship.

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[19] If the suggestion is that the indenture has created such a complex and diffuse set of interests that the property cannot be said to be "owned" by anyone or "held for" anyone, and that therefore it is immune from seizure under the Act, it carries its own refutation. Cf. *Smith* v. *Shaughnessy,* 318 U.S. 176, 180.

[20] Enemy control was specifically found by the Custodian, (p. 7, *supra;* R. 55).

In sum, all that the 1948 judgment of the New York court decided was that under a "right, title, and interest" vesting order the Attorney General was not immediately entitled to receive the income or the principal of the trust or to exercise the powers over the trust reserved to the settlor; it decided nothing, and could have decided nothing, as to the authority of the Attorney General to *res* vest the corpus by a *future* order.

B. The Contingent Remainder of Respondent Schaefer Does Not Bar The Relief Sought by the Attorney General

In its Opinion (R. 338-339), the New York Supreme Court appeared to rest its decision on another ground: that "there is at least one person now in being who is a United States citizen and who may well become entitled to the entire principal of this trust upon its termination." The reference is to respondent Hans Dietrich Schaefer, who, so far as the record shows, is the only living Reinicke grandchild. Schaefer has a contingent remainder (R. 159) and apparently will become entitled to receive the entire principal of the trust if the three Reinicke children (Schaefer's mother and his two uncles) fail to survive their parents and die without leaving other issue.

This ground for the decision is wholly insubstantial. It is settled by decisions of this Court that the existence of a claim of title to the property seized under the Act does not constitute a bar to the enforcement of the Custodian's right to possession. *Stoehr* v. *Wallace*, 255 U.S. 239, 245-246; *Commercial Trust Co.* v. *Miller*, 262 U.S. 51, 56; *Ahrenfeldt* v. *Miller*, 262 U.S. 60. And see *Zittman* v. *McGrath* (*Zittman*

No. 2), 341 U.S. 471, 474. By reason of the "sole relief and remedy" provisions of the Act (see Sections 7(c) and 5(b)(2)), jurisdiction to adjudicate claims of ownership or title to property seized or vested under the Act is confined to the appropriate district court of the United States in a suit brought under Section 9(a). The "all inclusive language" denies to claimants "any other remedy." *Becker Co.* v. *Cummings*, 296 U.S. 74, 79. See, also, *Stoehr* v. *Wallace*, 255 U.S. 239; *Clark* v. *Uebersee Finanz-Korp.*, 332 U.S. 480, 487; *Propper* v. *Clark*, 337 U.S. 472, 484; *Tiedemann* v. *Brownell*, 222 F. 2d 802 (C.A.D.C.); *Kahn* v. *Garvan*, 263 Fed. 909, 914-916 (S.D.N.Y.). The plan of the Act is that the reduction of property to possession is "not to be defeated or delayed by defenses," whether resting on vested or contingent claims. *Commercial Trust Co.* v. *Miller*, 262 U.S. 51, 56.[21]

It does not follow, as respondents have suggested, that delivery of the trust property will leave Schaefer remediless. Section 9(a) is to be liberally construed to protect non-enemy persons. *Miller* v. *Robertson*, 266 U.S. 243, 248. The remedy afforded by the Section is as broad as the class of property interests protected

[21] By requesting the New York court to order the delivery of the property the Attorney General did not, and could not, consent to the adjudication of questions of title by that court. *United States* v. *Shaw*, 309 U.S. 495; *Ill. Cent. R.R. Co.* v. *Public Utilities Comm.*, 245 U.S. 493, 504. Congress has reserved the determination of such questions to suits under Section 9(a), and "[w]here jurisdiction has not been conferred by Congress, no officer of the United States has power to give any court jurisdiction of a suit against the United States." *Minnesota* v. *United States*, 305 U.S. 382, 388-389.

by the Fifth Amendment, and it is because of that remedy that the seizure provisions of the Act are constitutional. *Becker Co.* v. *Cummings,* 296 U.S. 74, 79-80. See, also, *Stoehr* v. *Wallace,* 255 U.S. 239; *Clark* v. *Uebersee Finanz-Korp.,* 332 U.S. 480, 487.

On the record, Schaefer's interest is contingent, not vested, and he has no present possessory interest to assert. However, in the analogous situation of condemnation of property for a public use, the courts have held that future interests may be entitled to compensation. See *Duke Power Co.* v. *Rutland,* 60 F. 2d 194, 196 (C.A. 4); *Stubbs* v. *United States,* 21 F. Supp. 1007, 1010 (M.D.N.C.); Restatement, *Property* (1936), § 53, comments b, c. Compare *McGinley* v. *Central Nebraska Public Power & Irr. Dist.,* 124 F. 2d 692 (C.A. 8); *Koehler* v. *Clark,* 170 F. 2d 779 (C.A. 9); *Fifer* v. *Allen,* 228 Ill. 507, 81 N.E. 1105, holding interests to be too remote or to be mere expectancies.

It is, of course, unnecessary to determine at this stage what type of relief a court of equity might order, in a proper case, on behalf of a claimant asserting a future interest in property that has been vested, *e.g.*, whether it should grant a judgment in the amount of the appraised value of the interest or adjudge declaratory or some other form of relief. It is enough for present purposes that Section 9(a) is broad enough and the powers of an equity court sufficient to

provide for full satisfaction of all claims entitled to constitutional protection.[22]

CONCLUSION

Zittman v. *McGrath*, 341 U.S. 471, and *Brownell* v. *Singer*, 347 U.S. 403, are controlling and require reversal of the judgment below. Nothing in the prior litigation warrants a departure in this case from the rule established by those cases and the earlier decisions of this Court. The 1948 judgment did not, and could not, adjudicate the authority of the Custodian to obtain possession of the trust property by a *res* vesting, and the rights of remaindermen under the trust may be asserted in a subsequent suit under Section 9(a) of the Act and only under that Section.

For the foregoing reasons, the judgment of the Supreme Court of the State of New York should be reversed.

Respectfully submitted,

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July, 1956

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[22] We note parenthetically that a notice of claim (which is a prerequisite of suit under Section 9(a)) has been filed on Schaefer's behalf with the Office of Alien Property (Claim No. 66635). Claims have also been filed by the trustee (No. 66634), by Bruno Carl Reinicke (No. 32404) and by Robert Hans Reinicke, (No. 33813).

APPENDIX

1. Trading with the Enemy Act, as amended, 40 Stat. 411, 50 U.S.C. App. § 1, et seq.:

SEC. 5. . . .

(b)(1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, transfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such

terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, . . .

* * * *

SEC. 7. . . .

(c) If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

* * *

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and enforced against the net

proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

* * *

SEC. 9. . . .

(a) Any person not an enemy or ally of enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided,* That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice

by the Trading With the Enemy Act of October 6, 1917, as amended, and as President of the United States, it is hereby ordered as follows:

* * *

2. The Alien Property Custodian is authorized and empowered to take such action as he deems necessary in the national interest, including, but not limited to, the power to direct, manage, supervise, control or vest, with respect to:

* * *

(c) Any other property or interest within the United States of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, a designated enemy country or national thereof: *Provided, however,* That with respect to any such country or national other than Germany or Japan or any national thereof, such property or interest shall not include cash, bullion, moneys, currencies, deposits, credits, credit instruments, foreign exchange, and securities except to the extent that the Alien Property Custodian determines that such cash, bullion, moneys, currencies, deposits, credits, credit instruments, foreign exchange, and securities are necessary for the maintenance or safeguarding of other property belonging to the same designated enemy country or the same national thereof and subject to vesting pursuant to section 2 hereof;

* * *

(f) Any property of any nature whatsoever which is in the process of administration by any

which is in partition, libel, condemnation or other similar proceedings and which is payable or deliverable to, or claimed by, a designated enemy country or national thereof.

* * *

In the Supreme Court of the United States

OCTOBER TERM, 1956

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN, PETITIONER

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH, 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

REPLY BRIEF FOR THE PETITIONER

The briefs for the respondents seem to suggest that in the previous suit in which the judgment of January 30, 1948 (R. 211–224) was entered, the Attorney General, as successor to the Alien Property Custodian, put in issue and litigated his right to *res* vest the corpus of the trust, and that the New York courts determined that he had no such right.

In the brief for the respondent Bank is this statement, supported by no reference to the record:

> In the Court of Appeals the Attorney General, referring in his brief to the broad powers

> given to the Attorney General under the Trading with the Enemy Act to seize property, demanded in the alternative that the Court of Appeals determine that the entire trust fund should be paid over to him. [p. 4]

The brief for the respondent Arthur J. O'Leary, *et al.*, states:

> Petitioner in the prior proceeding relating to this trust made a "turnover" demand [1] which the New York Court of Appeals ruled upon and held invalid (R. 197). [p. 18]

And the brief for the respondents Hans Dietrich Schaefer, *et al.* states:

> In the prior action, in which Custodian's request that he was entitled to immediate possession of the trust was denied * * * [p. 7]

These statements would appear to imply that in the prior action the right of the Attorney General to vest the *res* was litigated and determined adversely to him, and he did not apply for certiorari, so he is estopped from asserting the same right in the present action. Cf. *Angel* v. *Bullington*, 330 U. S. 183.

Such implication, however, is erroneous, and the question of estoppel is not presented, because the statements quoted above reflect a misreading of the record.

In the first place, the 1948 judgment, printed in full in the record at pages 211 to 224, contains no reference to a claim by the Attorney General for

[1] In *Zittman* v. *McGrath*, 341 U. S. 471, the Attorney General issued a "turnover directive" subsequent to a "right, title, and interest" vesting order.

principal or to the denial of such a claim. And the finding of the trial court that:

> It was also requested in said action by the Attorney General as Successor to the Alien Property Custodian that the Court should determine that the entire principal of the said trust should be transferred to the Attorney General as Successor to the Alien Property Custodian on the ground that all interests in the trust had vested in the Attorney General by said vesting order #4551 [R. 155–160]

refers, as pointed out in our main brief (p. 21), to a claim based on the vesting of *interests*. It had nothing to do with any claim of a *res* vesting or of a right to immediate possession.

Page 197 of the Transcript of Record in the present suit shows that at the trial counsel for the respondent Bank offered in evidence the Attorney General's brief in the New York Court of Appeals in the first suit "to show the extent of the litigation and the effect of the Judgment which was affirmed by the Court of Appeals".

That brief was not received in evidence (R. 198–199) and is not in the printed record, which was stipulated by the parties as containing "all the evidence" (R. 340). We have, however, for the convenience of the Court, and to clarify the matter, lodged with the Clerk one original printed copy of that brief and eight photostatic copies.

What that brief discloses is that in the Court of Appeals the Attorney General stated that under the Act he *could* have vested the true *res* (pp. 10, 13–14),

but that he had not done so. There was an argument on pages 26 to 29, inclusive, under the heading:

> IV. If the Powers Reserved to Bruno Reinicke, Jr., Cannot Be Exercised by the Custodian as Reinicke's Successor, the Trust Should be Terminated.

The gist of the argument was that by the "right, title, and interest" vesting the Attorney General had succeeded to Reinicke's right of reversion (R. 237), that if Reinicke could no longer exercise his "personal" powers over the trust (and the judgment was that he could not, R. 221), then, under New York law, the trust should be terminated for failure of its purposes, and in that event the Attorney General would be entitled to the property as Reinicke's successor in interest. The argument was based on the vesting of one of Reinicke's "interests", the right of reversion, and asserted only his rights; there was no assertion of a *res* vesting, no "turnover demand", and no claim of a right to immediate possession.

In short, in the prior action the right or authority of the Attorney General was not asserted as a claim, it was not litigated, and it was not determined by the Court of Appeals of the State of New York or by any other court.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN,
Petitioner

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, ET AL.

On Petition for a Writ of Certiorari to the Supreme Court of the State of New York

BRIEF FOR RESPONDENTS HANS DIETRICH SCHAEFER, BRUNO CARL REINICKE, ROBERT HANS REINICKE AND JOHANNE MARIA REINICKE SCHAEFER IN OPPOSITION

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IN THE

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OCTOBER TERM, 1955

No. 601

HERBERT BROWNELL, JR., ATTORNEY GENERAL OF THE UNITED STATES, AS SUCCESSOR TO THE ALIEN PROPERTY CUSTODIAN,

Petitioner

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, AS TRUSTEE UNDER INDENTURE DATED THE 21ST DAY OF MARCH 1928, BETWEEN CHARLES L. COBB AND THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENTS HANS DIETRICH SCHAEFER, BRUNO CARL REINICKE, ROBERT HANS REINICKE AND JOHANNE MARIA REINICKE SCHAEFER IN OPPOSITION

Jurisdiction

The Petitioner has failed to demonstrate that the Supreme Court has or should assume jurisdiction. Although the Petitioner on December 6, 1955 filed in the Supreme Court, New York County, a notice of appeal to this Court, he now admits that no appeal lies but "that certiorari is the appropriate remedy" (Petition, p. 9, ftn. 7). We submit that the decision of the State Court rested on an adequate nonfederal ground and that the issuance of a writ of certiorari is otherwise unwarranted.

Question Presented

The "Amendment to Vesting Order 4551", dated April 6, 1953, recites precisely the same list of alleged "nationals of a designated enemy country" (R. 54-55) as owners of the property being vested as does earlier Vesting Order 4551, dated January 29, 1945 (R. 67-68). No new or different *enemy* interests are vested by the "Amendment." A judgment rendered in the prior litigation denied that Petitioner was entitled to immediate possession of the *corpus* of the trust and of all accumulations. Similar relief requested by the Petitioner in this litigation was again denied on the principles of *res judicata*.

Consequently, the question presented, if any, is whether Petitioner, by the "Amendment to Vesting Order 4551", issued in circumvention of and contrary to the prior judgment, became entitled to the immediate possession of the trust property in disregard of principles of *res judicata*.

Statement

The action was brought by The Chase National Bank of The City of New York, Trustee under the indenture specified in the caption (hereinafter briefly "Trustee") for judicial settlement of its intermediate account of proceedings under an *inter vivos* trust. In view of the request of the Attorney General, as Successor to the Alien Property Custodian (hereinafter briefly "Custodian" or "Petitioner"), to deliver to him the trust property, the Trustee also asked the court to determine whether or not the principal of the trust should be transferred to the Custodian.

The Custodian, who was a party defendant to this action, appeared generally and filed an answer, demanding affirmative relief. He demanded judgment adjudging him to be entitled to immediate possession of the *corpus* and income of the trust, and ordering the payment and delivery of said property to him after the deduction of all expenses and charges.

Although certain objections were raised by the Custodian against the account of proceedings of the Trustee, the portion of the judgment of the Supreme Court, New York County, judicially settling the account of proceedings of the Trustee, is for all practical purposes beyond dispute.

Beyond dispute also are the following relevant and salient facts:

The trust herein is a continuing trust and has not terminated; the remainder interests created under the Trust Indenture (Article 6) are contingent in their nature; there are outstanding beneficial interests under the trust which have not yet validly vested; the ultimate remaindermen are not ascertainable and cannot be identified at this time (R. 160).

The trust fund and accumulated income thereof is held by the Trustee under the Indenture of Trust, dated March 21, 1928, and is not properly payable or deliverable to, or claimed by, or held for, or owned by any person, but is to be held, administered and disposed of by the Trustee as provided in the Indenture of Trust for future distribution not to take effect earlier than after the death of the survivor of Bruno Reinicke and his wife. All income is to be accumulated and added to the principal as provided in the Indenture, and authorized by the law of Illinois governing the trust (R. 160). Bruno Reinicke, Jr., the settlor, and his wife, and their three children, Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, were living on April 6, 1953 and are still living.

By Vesting Order 4551, dated January 29, 1945, (R. 67) the Custodian vested "all the right, title, interest, and claim" in the trust of Bruno Reinicke, his wife and the three children.

Although the Supreme Court of the State of New York has determined in the prior litigation as well as in this litigation that the ultimate remaindermen are not ascertainable and cannot be identified then or now, the Custodian, in complete disregard of the prior judicial determination,

listed in the "Amendment to Vesting Order 4551" the same persons as were listed in the 1945 Vesting Order, and found that the property was owned by them and determined that they were "nationals" of Germany. In order to circumvent the binding effect of the prior valid adjudication, the Custodian purported to vest in himself the "res" of the trust.

The Custodian did not formally vest the interests of the infant Hans Dietrich Schaefer either by specifically stating his name, or by naming a class of which he is a member (R. 53-56). Yet, indisputably, he is an American citizen by birth, born August 15, 1953 at Detroit, Michigan (R. 159). He has a contingent interest in the trust fund and he may become entitled to the entire principal and accumulated income thereof upon the termination of the trust (R. 159).

The crux of the controversy before the New York courts was whether the Custodian, by virtue of an instrument issued by him on April 6, 1953, entitled "Amendment to Vesting Order 4551", could obtain possession and control of a trust *corpus* in circumvention of the prior judgment of the New York Supreme Court, affirmed by the Appellate Division and by the Court of Appeals, or whether the trust property should continue to be held and administered by the Trustee in accordance with the provisions of the Trust Indenture and said prior judgment.

The judgment of the New York Supreme Court directed the Trustee to retain the principal and accumulated income of the trust under the indenture dated March 21, 1928 as provided therein. It further decreed that no payment of income, of principal, or of accumulated income, should be made to any beneficiary without 60 days' written notice to the Custodian by registered mail (R. 177). The interests of the United States are therefore fully safeguarded by Vesting Order 4551 and the above requirement of notice. The administration of the trust in accordance with the indenture is thus preserved and the principles of *res judicata* are observed.

Reasons for Denying the Petition for a Writ

A. The decision of the State Court rested on adequate nonfederal grounds.

This Court has repeatedly stated that jurisdiction cannot be founded upon surmise. It said in *Lynch* v. *New York*, 293 U. S. 52, 54:

> ". . . Nor can claim of jurisdiction be sustained by reference to briefs and statements which are not part of the record.
>
> "It is essential to the jurisdiction of this Court in reviewing a decision of a court of a State that it must appear affirmatively from the record, not only that a federal question was presented for decision to the highest court of the State having jurisdiction but that its decision of the federal question was necessary to the determination of the cause, and that it was actually decided or that the judgment as rendered could not have been given without deciding it."

See also:

Stembridge v. *Georgia*, 343 U. S. 541, 547;
Ellis v. *Dixon*, 349 U. S. 458, 459.

The decision of the Supreme Court of New York rested on adequate nonfederal grounds. It is incontrovertible that an action for judicial settlement of a trustee's account of proceedings brought by a New York trustee involving trust funds located in New York is within the jurisdiction of the New York courts of equity. That the trust in the instant case is governed by the law of Illinois does not create a federal question. The denial of the relief requested by the Custodian that he was entitled to the immediate possession of the trust *corpus*, and the instructions of the Court to the Trustee directing the Trustee to retain the trust property and to continue the administration of the trust, were clearly within the jurisdiction of the New York Supreme Court. Its decision rested on the principles of *res judicata*.

A binding previous adjudication was pleaded by the Trustee in its complaint (R. 12-17). The defense of *res judicata* was interposed in the answer of the Guardian ad Litem for Hans Dietrich Schaefer (R. 83) and the answer of Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer (R. 93-94). The only opinion written, the opinion of the Supreme Court, New York County (R. 338-339), together with the decision (R. 150, 155-160) clearly shows that the determination made in the prior litigation was held by the court to be a complete bar to the Custodian's present claim.

The Custodian himself admitted that *res judicata* was a ground for the decision of the New York Supreme Court and of the Appellate Division, First Department, of that Court, by stating in the affidavit of George B. Searles, sworn to July 26, 1955,* in support of the Motion for Leave to Appeal to the Court of Appeals that one of the questions raised and of importance was:

> "(c) Whether a judgment that the Attorney General was not entitled to recover any part of the trust property on the basis of an order which vested merely the right, title and interest of the beneficiaries was *res judicata* of the Attorney General's right to possession of the property under a subsequent order which vested the trust res itself."

* Although the briefs of the Petitioner filed on the appeal to the Appellate Division and in support of the Motion for Leave to Appeal to the Court of Appeals are not a part of the record, they show that *res judicata* as a ground for the denial of the relief sought by the Custodian was discussed *in extenso*. Moreover, the record itself clearly demonstrates that the judgment in the prior litigation is and was deemed a complete bar to the Custodian's present claim (see particularly R. 155-159). That judgment specifically decreed that the exercise of administrative powers con-

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* Printed copies of the affidavit are lodged with the Clerk of this Court (Petition, p. 9, ftn. 6).

ferred upon the Trustee by the Trust Indenture shall remain in the Trustee and that the Custodian has not succeeded to the powers of the settlor and his wife over the management and disposition of the trust *corpus* or of trust income (R. 221-223).

The judgment in the case at bar properly preserved the rights fixed by the earlier decree, even as it gave full protection to the interests of the United States.

It is true that the question of the constitutionality of the "Amendment" to Vesting Order 4551, dated April 6, 1953, issued after the state of war between the United States of America and Germany was terminated on October 19, 1951, and its unlawfulness under the Trading with the Enemy Act, was argued before the Supreme Court of the State of New York. Yet there is no scintilla of evidence in the record that the question was actually decided or that the judgment as rendered could not have been given without deciding it.

It is well established by decisions of this Court that *res judicata*, like other kinds of estoppel ordinarily is a matter of state law. A decision that the question in issue is *res judicata* does not present a federal question. As the decision of the state court in this case in effect rests upon that ground, this of itself would be sufficient to deny the petition.

Northern Pacific R. Co. v. *Ellis*, 144 U. S. 458;
San Francisco v. *Itsell*, 133 U. S. 65;
Adams v. *Louisiana Board of Liquidation*, 144 U. S. 651.

B. There is no conflict of decision.

The contention of the Petitioner that "The action of the New York courts in this case is irreconcilable with controlling decisions of this Court" (Petition, p. 10) is not well taken.

In *Zittman* v. *McGrath*, 341 U. S. 471, the Custodian demanded transfer of a credit from a debtor bank which

had no interest in the credit except that of stakeholder. Similarly, in *Brownell v. Singer*, 347 U. S. 403, decided on the authority of the *Zittman* case, the fund to be paid over to the Custodian pursuant to a "turnover order" involved a fund of a Japanese bank's New York Agency in liquidation in the hands of the New York Superintendent of Banks. In the instant case, the bank is a Trustee which has the legal title to the property and administers the trust in accordance with the rights and duties fixed by the Indenture of Trust.

In the *Zittman* case the Vesting Order vested debts owed to a foreign national by a New York debtor bank, and debts evidenced by instruments endorsed by the foreign national and held by a Federal Reserve Bank. The Custodian also served a "turnover directive" describing the specific property which he required to be turned over to him.

In the instant case the New York courts held in the previous litigation that the equitable ownership of the trust fund cannot be ascertained until the termination of the trust. The Custodian completely ignored this determination in the "Amendment" to the Vesting Order. Since the underlying facts, to wit "enemy interest" in the trust as specified in the Vesting Order, as well as in the amendment thereto, are identical, the "Amendment to Vesting Order 4551" was but a mere device to circumvent the binding effect of previous adjudication. The New York courts properly adhered to their previous determination.

Another fact brings into sharp focus the consequences of disregard of that determination. Hans Dietrich Schaefer, an American citizen by birth, has a contingent interest in the trust fund and he may become entitled to the entire principal and accumulated income thereof upon the termination of the trust. His interest was not vested by the "Amendment" to the Vesting Order. The delivery of the trust property to the Custodian will in effect destroy the trust. The infant's opposition to the relief sought by the Custodian was based on a genuine necessity to defend his rights in this action.

In *Zittman* v. *McGrath*, 341 U. S. 446, this Court held that in the case of a "right, title and interest" vesting order the Custodian stepped into the shoes of the enemy banks, and in *Zittman* v. *McGrath*, 341 U. S. 471, it held that in the case of a so-called "res" vesting order the Custodian stepped into the shoes of the possessor (not the owner) of the credits and funds. These holdings point up sharply that the cited cases are inapplicable to the case at bar. The Custodian, cannot step into the shoes of an *indenture trustee* of a *continuing trust*. There is no basis whatsoever for the Custodian to assume the circumscribed rights and the corresponding onerous duties and liabilities of an *indenture* trustee. The Trading with the Enemy Act provides that the Custodian shall have the power of a *common-law* trustee in respect of all property, other than money, delivered to him (Trading with the Enemy Act, § 12, 40 Stat. 411, as amended, 50 U. S. C. App. § 12).

The veiled rebuke in the petition (p. 10) that "It is particularly important that it [the rule of the *Zittman* and *Singer* cases] should be recognized in the courts of New York where there is more litigation under the Act than in any other State"—is wholly unwarranted. The New York courts are particularly mindful of and sensitive to the protection of trusts and the discharge of fiduciary duties in accordance with the highest standards. They are reluctant to destroy a trust, particularly when the interests of the United States can be and are otherwise sufficiently protected, as in this case, by the "right, title and interest" vesting order and the provision for notice to the Custodian of any payment out of the trust.

C. Questions not briefed because neither decided nor necessary to the decision of the State Courts.

We have refrained from briefing the following questions because they were neither actually decided nor necessary to the decision of the New York courts:

1. That the instrument entitled "Amendment to Vesting Order 4551", dated April 6, 1953, issued eight years

after the cessation of hostilities and 18 months after the formal termination of the state of war between the United States and Germany is unlawful, unconstitutional, contrary to the Trading with the Enemy Act, and subversive of the basic purpose of the Act;

2. That a provision in a treaty furnishing the consent of a foreign state to seizure of its nationals' assets for the purpose of payment of claims of United States nationals cannot support an argument that Congress can authorize seizure of property in time of peace by *unilateral* act. Statutory vesting and seizure must constitute a valid exercise of a power granted by the Constitution—a power available only in time of war;

3. That the trust *res* was not subject to vesting or seizure prior to January 1, 1947 under the provisions of the Trading with the Enemy Act;

4. That Vesting Order 4551, dated January 29, 1945, vesting "all right, title, interest and claim" in the trust of the settlor, his wife and three children, as well as of other specified persons alleged to be "enemy nationals", exhausted the vesting power of the Custodian based upon the same underlying operative facts. The "Amendment" is unlawful and merely a device to circumvent the binding effect of the prior judgment by seizing the entire trust *res*, including the interests in the trust of persons concededly not enemies, whose interests were not and could not have been vested prior to January 1, 1947;

5. That the cavalier relegation of the infant Hans Dietrich Schaefer to the remedies of Sections 9(a) and 32 of the Trading with the Enemy Act does not satisfy the requirements of due process of law. Born in the United States in 1953, this American citizen would be confronted with an argument advanced in similar cases by the Custodian which, if accepted in this case, renders the statutory remedies illusory. Both Sections 9(a) and 32 require that

the claimant establish, as of the time immediately prior to seizure, his ownership of a proprietary interest in the property.

Conclusion

The decision of the State Courts resolves no substantial federal question, no question of general importance, but properly determines the narrow issues raised by the particular facts of this case. There is no conflict of decision. Indeed, this case is *sui generis*. The interests of justice would best be served by denial of the petition for a writ of certiorari.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

January, 1956

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. [redacted] 24

HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian,

Petitioner,

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee Under Indenture Dated the 21st Day of March 1928, Between Charles L. Cobb and The Chase National Bank of the City of New York, *et al.*

BRIEF FOR ARTHUR J. O'LEARY, GUARDIAN AD LITEM FOR INFANT RESPONDENTS HANS ULRICH SCHWARZBURGER, ELIZABETH SCHWARZBURGER, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE SCHWARZBURGER, BERND VOM BAUR, CHRISTOPH ROTT, TILO KOSTER AND SITTA KOSTER, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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IN THE

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HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian,

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BRIEF FOR ARTHUR J. O'LEARY, GUARDIAN AD LITEM FOR INFANT RESPONDENTS HANS ULRICH SCHWARZBURGER, ELIZABETH SCHWARZBURGER, HANS ADOLF ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE SCHWARZBURGER, BERND VOM BAUR, CHRISTOPH ROTT, TILO KOSTER AND SITTA KOSTER, IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

The Solicitor General on behalf of Herbert Brownell, Jr., Attorney General applies for a writ of certiorari to review the judgment of the Supreme Court of New York County, dated July 5, 1955. This brief is submitted in opposition to that application.

Question Presented

The sole question presented by the Attorney General's application for a writ of certiorari is the following:

Whether this Court, in its decisions in *Brownell* v. *Singer,* 347 U. S. 403 and *Zittman* v. *McGrath,* 341 U. S. 471, has so construed the Trading with the Enemy Act, 50 U. S. C. App. sees. 1 *et seq.,* as to require the New York Supreme Court, in an accounting proceeding brought at the request of the Attorney General (R. 18, 23), to oust itself of jurisdiction of a continuing *inter vivos* trust (R. 160), which is being administered under its supervision by a New York bank as trustee (R. 70), by directing said trustee to transfer to the Attorney General, as successor to the Alien Property Custodian, the accumulated income and corpus of said trust pursuant to an amended vesting order which was filed with the Federal Register on April 9, 1953 (R. 64), a date 18 months after formal termination of the war with Germany (65 Stat. 451; Proclamation 2950, 50 U. S. C. A. App. p. xx), where the following circumstances clearly exist:

(a) that the trust was created on March 21, 1928, long before any freezing or vesting order was made (R. 21);

(b) that one of the remaindermen of the trust is an United States citizen by birth (R. 159, Pl. Ex. 10, R. 253, 186), who was in being prior to the time the amended vesting order was made (R. 159);

(c) that all the remainder interests in the trust are contingent (R. 160);

(d) that the remedy provided by Section 9 of the Act is illusory and inadequate in the instant case (this brief, pp. 9-10);

(e) that there has been a prior judicial proceeding relating to this trust in the New York Supreme Court in which the Attorney General intervened and in which judgment was entered to the effect that said Attorney General is not entitled to the income of said trust and had no authority to exercise the fiduciary powers reserved to Bruno Reinicke, Jr., but that the trustee bank had authority to exercise such fiduciary powers (Pl. Ex. 3, R. 211-223, 183-184; Pl. Ex. 4, R. 229, 184; Pl. Ex. 5, R. 231, 184).

It is respectfully submitted that this Court has not so construed said Act either in the cited decisions or in any other decision.

Reasons for Denying the Writ

The action of the New York courts in this case is in harmony with the Trading with the Enemy Act and is not in conflict with the rule in *Brownell* v. *Singer*, 347 U. S. 403, nor with the rule in *Zittman* v. *McGrath*, 341 U. S. 471. Neither of these two cited cases upon which the petitioner relies is applicable here.

1. The instant case must be distinguished from *Brownell* v. *Singer, supra,* and *Zittman* v. *McGrath, supra,* because of important, relevant, essential and outstanding differences. We are not dealing here with enemy owned property; we are dealing with property owned since 1928 by a New York trust com-

pany, which is held on *inter vivos* trust for the benefit of at least one American citizen, which is in the process of administration under judicial supervision and which is not "payable or deliverable to, or claimed by a designated enemy country or national thereof" (Ex. Ord. 9095 as amended, 50 U. S. C. A. App. sec. 6, pp. 43-44). In the *Singer* case the Custodian vested the *res* consisting of funds that had been on deposit in an agency of an enemy alien bank. The Courts of New York adjudged that Singer had a preferred claim on those funds the payment of which was conditional upon Singer obtaining a license from Federal Authorities. (*Singer* v. *Yokohama Specie Bank,* 299 N. Y. 113, affirmed *sub nom. Lyon* v. *Singer,* 339 U. S. 841, 94 Law ed. 1323.) But the Alien Property Custodian denied a license to Singer and served a directive that the Superintendent of Banks of New York turn over to him the $557,561.25 that had been allocated and set aside out of the enemy alien's funds as a reserve for the payment of Singer's preferred claim. The New York Superintendent of Banks applied at Special Term of the Supreme Court for an order authorizing him to turn over the funds to the Alien Property Custodian. That application was denied. Special Term held that while the funds could not be paid to Singer, who had been denied a license, neither should the funds be paid over to the Alien Property Custodian. It was held that this allocated fund for payment of a preferred claim did not constitute "excess proceeds" of the Yokohama Specie Bank and were not encompassed by the Vesting Order of 1943 whereby the Custodian had vested "excess proceeds"—that is proceeds over and above the amounts of approved and allowed claims. Special Term also observed that *Lyon* v. *Singer,* 339 U. S. 841, which

affirmed a judgment adjudicating that Singer had a preferred claim, with payment conditioned upon obtaining a license, does not mean that a license may be arbitrarily withheld. (*In re Yokohama Specie Bank,* 200 Misc. 610; affirmed no opinion, 280 App. Div. 970; affirmed no opinion, 305 N. Y. 908.) On appeal by the Attorney General to the Supreme Court of the United States, the judgment of the New York Courts was reversed with a *per curiam* opinion, reading:

> "Reversed. *Zittman* v. *McGrath,* 341 U. S. 471, 95 Law ed. 1112, 71 S. Ct. 846." (*Brownell* v. *Singer,* 347 U. S. 403, 98 Law ed. 803.)

There is a dissenting opinion by Justice Jackson with whom Justice Frankfurter and Justice Douglas join.

What was decided and all that was there decided is that the Custodian was entitled to the possession of all the funds in the hands of an agency of an enemy alien even though a creditor had a preferred claim against those funds. That decision has no application to this case which does not involve funds on deposit with an agency of an enemy alien and has nothing to do with creditors or preferred claims.

We turn now to *Zittman* v. *McGrath,* 341 U. S. 471, 95 Law ed. 1112. There the petitioners had levied an attachment against the accounts of the Deutsche Reichsbank with the Federal Reserve Bank of New York and thereafter obtained default judgments against the Reichsbank but the judgments remained unsatisfied because of the freezing program. The Alien Property Custodian issued a Vesting Order

whereby he vested in himself the "right, title and interest" of the German banks and also served on the Federal Reserve Bank a "turnover directive" describing the specific property which he required to be turned over to him "to be held administered and accounted for as provided by law." As Justice Jackson stated, 341 U. S. 471 at 473, the Custodian in the relief asked for "omits any request for a declaration that the attachments are invalid. He asks a decree only that Custodian is 'entitled to possession' of the accounts in their entirety". What was decided there is stated in these words (p. 474):

> "In view of these facts, we decide and decide only, that the Custodian has power to possess himself of these funds and to administer them."

The Federal Reserve Bank, a stakeholder had no interest in the funds so ordered to be turned over; these were the funds of the Reichsbank. An attachment, so it was held, does not deprive the Custodian of his power to possess and administer funds of an enemy alien. But in our case we are not dealing with enemy funds nor credits to an enemy alien's account in a New York bank, nor is there any question of the validity or invalidity of attachments. Here the Custodian is not seeking possession of a fund of an enemy alien to be administered for creditors. He seeks possession of the assets of a New York trust held, owned and being administered by a New York trust company under the supervision of the New York Supreme Court. No enemy alien owns the assets of the trust and they are not "payable or deliverable to or claimed by a designated enemy country or national thereof" (Ex. Ord. 9095 as amended). The interests of the enemy aliens are of a contingent nature capable

of ascertainment and measurement only upon the termination of the trust and such interests may never ripen into ownership (R. 160). Moreover contingent remaindermen are not entitled to ownership, or possession or control of trust assets.[1]

The petitioner asserts that the Custodian's 1945 Vesting Order in the instant case (R. 67-72) is similar to the "right, title, and interest" vesting order in the first *Zittman* case, 341 U. S. 446, and to the "excess proceeds" order in the first *Singer* case, 339 U. S. 841. Then he asserts that the 1953 amended vesting order is a vesting of *res*, similar to the "turn-over directives" in the second *Zittman* and *Singer* cases, 341 U. S. 471 and 347 U. S. 403. From that stated similarity the petitioner erroneously concludes that he is entitled to immediately take possession and administer assets of an *inter vivos* trust, which is being administered under judicial supervision, which are not owned by aliens and not in the possession of aliens, and which are not "payable or deliverable to or claimed by a designated enemy country or national thereof" (Ex. Ord. 9095 as amended). What was vested in the *Zittman* and

[1] Since the trust indenfure contemplates administration by a New York trust company in New York (R. 21, 153), but also provides that the trust shall be performed in accordance with the laws of the State of Illinois (R. 48), the nature of the respective interests and rights of the trustee and of the cestuis, respectively, in the corpus of the trust is governed by either New York law or Illinois law. If the New York law governs, it is clear that the only interest of the beneficiaries is a generic right to enforce the trust and that the trustee has the whole estate both legal and equitable including the right to possession and control of the corpus, *Whitney* v. *Hudson Trust Co.*, 234 N. Y. 394; *Schenck* v. *Barnes*, 156 N. Y. 316; *Matter of Wentworth*, 230 N. Y. 176. If Illinois law governs, the trustee has the legal estate and the right to possession and control of the corpus, *Altemeier* v. *Harris*, 403 Ill. 345, 86 N. E. 2d 229; *Anderson* v. *Williams*, 262 Ill. 308, 104 N. E. 659.

Singer cases was property actually owned by enemy aliens as we have shown in our discussion of those cases, *supra*. What is attempted to be vested here is essentially different.

The petitioner in an earlier proceeding in New York Courts demanded, under the 1945 Vesting Order, payment to him of the income and principal of the trust (R. 155-156). That relief was denied in a judgment entered January 30, 1948 (R. 156). The judgment was affirmed by the Appellate Division, 276 App. Div. 831; and affirmed by the Court of Appeals, 301 N. Y. 602. The finality of that judgment is no longer open to question. That judgment would be nullified if, by virtue of the April 6, 1953 Amended Vesting Order, the petitioner can now obtain a judgment directing payment of the income and principal of the trust to him. The prior judgment is *res adjudicata*. (*Schuykill Fuel Corp.* v. *Nieberg*, 250 N. Y. 304; *Baltimore S. S.* v. *Phillip*, 274 U. S. 351.)

To observe, as does petitioner (Petition, p. 16), that there is nothing in the Trading With the Enemy Act to suggest a privileged position for property held in trust is irrelevant. The Respondents rest on no claim of privilege. The Trial Court found as a fact that the trust fund and accumulated income is held by the Chase National Bank and is not property "payable to or deliverable to or claimed by" or held for or owned by any person but is to be held administered and disposed of by the Trustee as provided in the Trust Indenture for future distribution not to take effect earlier than the death of Bruno Reinicke, Jr. and his wife and all income is to be accumulated and added to the principal as provided in the Trust Indenture (R. 160). The Court also found as a fact

that at the time of the making of the Amended Vesting Order, dated April 6, 1953, the Respondent Hans Dietrich Schaeffer, grandson of Bruno Reinicke, Jr., was then in being, was an American citizen who has a contingent interest in the trust fund and its accumulated income and may become entitled to the entire principal and income upon termination of the trust (R. 159). That finding was made by a Court having supervision of the trust and there is nothing in the Trading With the Enemy Act which indicates any intent to deprive New York Courts of supervision or jurisdiction over trusts.

Though we are dealing with a trust here, the petitioner would persuade the Court that if he vests the *res*, it is exactly as though he were vesting a *res* consisting of an enemy alien's bank account. But a trust fund is not an enemy alien bank account. Here the trust was created in 1928 whereby property was transferred to a New York Bank; until the trust terminates, on the expiration of two lives in being, ownership is in the trustee. True the persons interested, some of them at least, and only some of them, are enemy aliens, but in the aggregate the entire rights of the enemy aliens, whether vested subject to being divested by death, whether contingent or a mere expectancy are certainly less than the ownership of the trust in its entirety. An American citizen has also a remainder interest. But take the entire fund from the trustee and you leave the beneficiary, if he happens to be an American citizen, without a remedy whereby he may establish his rights. As a contingent remainderman he cannot bring suit on rights as yet undetermined. *Koehler* v. *Clark*, 170 F. 2d 779; when the trust by its terms terminates his remedy has been

lost under a statute of limitations, 50 U. S. C. App. secs. 32, 33, *Pass* v. *McGrath,* 192 F. 2d 415, cert. den. 342 U. S. 910.

The trustee cannot bring suit under Section 9 (a) of the Act for return of the property because it has no beneficial interest in the property, *Central Hanover Bank* v. *Markham,* 68 F. Supp. 829. Petitioner cites (Petition, p. 16) two cases, *United States Trust Co.* v. *Hicks,* 16 F. 2d 286, and *Koehler* v. *Clark,* 170 F. 2d 779, as authorities for the proposition that a trustee may successfully maintain a suit under Section 9 (a) of the Act for the return of property. Neither decision supports such proposition. In the *Hicks* case (*supra*) the suit was brought by an ancillary administrator, c. t. a. who is a fiduciary but is not a trustee. In the *Koehler* case (*supra*), the Court dismissed a suit brought under Section 9 (a) of the Act by the trustees of a testamentary trust. The ground of the dismissal was that the trustees had "no litigable interest" in the trust, 170 F. 2d 779, 783.

The cases cited by petitioner (Petition, pp. 16-17), in support of his statement that the application of the seizure provisions of the Act to trusts has uniformly been sustained, upon examination fail to support any such sweeping declaration. *Central Trust Co.* v. *Garvan,* 254 U. S. 554, involved neither a testamentary nor an *inter vivos* trust: it involved monies of enemy alien insurance companies deposited with a bank to secure creditors and policy holders of those foreign insurance companies, which is a sort of fiduciary relationship essentially different from the *inter vivos* trust involved in the instant case. *In re Miller,* 281 Fed. 764, related to an application by the Cus-

todian for an order directing trustees to pay over *income payable to enemy aliens.* No attempt was made to seize the corpus of the trust. *Central Hanover Bank* v. *Markham,* 68 F. Supp. 829, was an action by a trustee under Section 9 (a) of the Act to recover securities which it had turned over to the Custodian and which formed part of the corpus of the trust. The Court granted the Custodian's motion for summary judgment on the ground that *all* beneficial interests in the trust belonged to enemy aliens and the trustee had no beneficial interest in the trust, but the Court indicated that its decision would have been different if one of the beneficiaries had been an American citizen (p. 831) and cited and distinguished *Isenberg* v. *Trent Trust Co.,* 26 F. 2d 609, on that ground. In *Keppelmann* v. *Palmer,* 91 N. J. Eq. 67, all the beneficiaries of the trust were enemy aliens: no American citizen had any beneficial interest in the trust.

Petitioner's position (Petition, pp. 15-17, R. 180) is that this Court, in the *Singer* and *Zittman* cases (*supra*), has construed the Act to mean that the Custodian by his mere fiat, embodied in a *res* vesting order, can seize "any property" even that of an American citizen and even though the remedy given by Section 9 (a) of the Act is illusory and inadequate. We respectfully submit that such an interpretation of the Act would authorize the Custodian to confiscate the property of an American citizen and would render the Act unconstitutional. It is elementary that a construction which would render a statute unconstitutional is to be avoided if possible. Apart from this, petitioner's interpretation is in flat contradiction to the construction placed upon the Act by this Court

in *Becker Co.* v. *Cummings*, 296 U. S. 74, 79, *Henkels* v. *Sutherland*, 271 U. S. 298, 301, *Kaufman* v. *Societe Internationale*, 343 U. S. 156, 160 and *Guessefeldt* v. *McGrath*, 342 U. S. 308, 319.

In *Becker Co.* v. *Cummings*, 296 U. S. 74, this Court stated (p. 79):

> "The seizure and detention which the statute commands and the denial of any remedy except that afforded by Section 9 (a) would be of doubtful constitutionality *if the remedy given were inadequate* to secure to the non-enemy either the return of his property or compensation for it." (Emphasis supplied.)

In *Henkels* v. *Sutherland*, 271 U. S. 298, this Court ruled (p. 301):

> "The Government * * * cannot confiscate the actual increment of property, belonging to a citizen * * * anymore than it can confiscate the property or its proceeds, without coming into conflict with the Constitution."

In *Kaufman* v. *Societe Internationale*, 343 U. S. 156, this Court ruled (p. 160):

> "The innocent stockholder may not have title to corporate assets but he does have an interest which Congress has indicated should not be confiscated merely because some others who have like interests are enemies."

Finally, the construction urged by the Custodian is contrary to the long established holding of this

Court that federal courts do not have jurisdiction to oust state courts of possession and control of a *res* once the state courts have taken possession and control of such *res*, *Princess Lida* v. *Thompson*, 305 U. S. 456, *Commonwealth Co.* v. *Bradford*, 297 U. S. 613, 619. This holding has been applied by this Court to the Trading with the Enemy Act, *Markham* v. *Allen*, 326 U. S. 490, 494.

The judgment below preserved the rights established in the prior action and at the same time, went one step further for the protection of the Attorney General and directed in the judgment itself that "no payment of income, of principal or of accumulated income of the said trust shall be made to any beneficiary without 60 days written notice to the Attorney General of the United States to be given by registered mail" (R. 177). Consequently, upon the termination of the trust, should it eventuate that a national of an enemy country is entitled to any part of the corpus or income, the Attorney General may upon receipt of the notice directed to be given by this judgment, seize that which he is entitled to seize. The judgment takes nothing from the Attorney General because there is nothing owned by an enemy national at this time.

CONCLUSION

The decision below is in harmony with construction of the Act made by this Court. Hence the petition presents no substantial federal question and it should be denied with costs and disbursements to respondents.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. ~~601~~ 84

HERBERT BROWNELL, JR., Attorney General of The United States, as Successor to the Alien Property Custodian,
Petitioner

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee under Indenture dated the 21st day of March 1928, Between Charles L. Cobb and The Chase National Bank of the City of New York, et al.

BRIEF FOR RESPONDENT, THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK (now The Chase Manhattan Bank) as Trustee under Indenture dated the 21st day of March 1928, between Charles L. Cobb and The Chase National Bank of the City of New York, IN OPPOSITION

Opinion Below

The opinion of The Supreme Court of the State of New York, New York County (R. 338-39; New York Law Journal, May 28, 1954, p. 7) is not officially reported. That court's findings of fact and conclusions of law appear at (R. 150-168). Neither the Appellate Division, which affirmed the Supreme Court nor the Court of Appeals which denied a motion for leave to appeal, wrote an opinion.

Jurisdiction

The jurisdictional requisites as set forth in the petition do not support this application because the Court below decided this case on a non-federal basis.

Question Presented

Whether this court should review a judgment of the New York Supreme Court which was based upon a finding of *res judicata;* the said judgment having been decided on a strictly non-federal basis.

Statement

The facts to the extent stated are correctly stated by the petitioner. There are certain matters which have been omitted or were not fully treated to which we shall now refer.

In 1944 an action was brought on the Equity side of the New York Supreme Court by the Trustee of this trust for an accounting and for instructions. While that suit was pending the Alien Property Custodian by Vesting Order #4551 vested all the right, title and interest and claims in the trust, of all of the defendants named in that action. Thereafter the Alien Property Custodian intervened by petition in the said action. His petition was granted and an order was made by the New York Supreme Court, bringing him in as an intervening defendant. The Attorney General was thereafter substituted as an intervening defendant. He filed an answer asking the New York Court of Equity to construe the trust agreement and to grant him certain affirmative relief. This relief was not granted and a judgment was entered on January 30, 1948 (R. 155-158). The Attorney General appealed to the Appellate Division of the New York Supreme Court, and upon the affirmance of the judgment by the Appellate Division he appealed to the Court of Appeals of the State of New York. In the Court of Appeals the

Attorney General, referring in his brief to the broad powers given to the Attorney General under the Trading with the Enemy Act to seize property, demanded in the alternative that the Court of Appeals determine that the entire trust fund should be paid over to him. The Court of Appeals affirmed without opinion and no appeal or petition for a writ of certiorari was filed by the Attorney General from the judgment of affirmance of the Court of Appeals. (*Chase National Bank* v. *McGrath*, 301 N. Y. 602)

The Attorney General submitted himself to the jurisdiction of the Court of Equity of the State of New York by becoming an intervening defendant in the 1944 action.

Three years passed after the judgment of affirmance of the New York Court of Appeals and then the Attorney General "amended" his Vesting Order #4551. This "amendment" was made eleven days before President Eisenhower was to announce to Herr Adenauer that there would be no more seizures by the Attorney General. Instead of making use of a "turn over directive" which was the course followed by the Attorney General in the Zittman[1] case and in the Singer[2] case, he "amended" Vesting Order #4551 to make it, as he says a "*res* vesting order."

The Trustee was requested to account by the Attorney General. (R. 57-58) It began an action for an accounting in the same court that had passed upon the questions submitted in the previous action, at the same time asking for instructions as to the effect of the amended vesting order; and requesting that it be directed to retain a reserve for the prosecution of a suit against the Attorney General to recover the trust fund in case the Court should hold that the Attorney General was entitled to the trust fund. The Trustee felt that an immediate suit was necessary in such event in view of *Isenberg* v. *Trent Trust Co.* 26 Fed. 2d 609. The Attorney General appeared and answered the complaint requesting that the court determine that the fund should be paid over to him.

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[1] Zittman v McGrath, 341 U. S. 471

[2] Brownell v Singer, 347 U. S. 403

The New York Supreme Court as appears from the opinion (R. 338-339) found that it could not determine that the "Amended Vesting Order" gave the Attorney General the right to take over the trust fund because it was decided in 1948 that the Attorney General was not entitled to the income of the trust or to exercise any powers with respect to it; and that the ownership of the trust fund could not be determined until the termination of the trust. In *Chase National Bank* v. *Reinicke*, 76 N. Y. Supp. 2nd, 63 the Court had said at page 65:

> "At this time, remainder interests are essentially contingent and the identity of the ultimate remaindermen is unascertainable. The Attorney General's property rights are simply co-extensive with those of the beneficiaries whom he has succeeded. This precludes any power to change the terms of the original indenture and to confer on the Attorney General property rights superior to those of his predecessors in interest."

The Court at Special Term held that the Attorney General was not entitled to the trust fund, but he went on to decide that no beneficiary either was entitled to the trust fund until the trust terminated; and in the meantime the income should be accumulated, and that the Attorney General should have notice by registered mail of any proposed payment of income or principal by the Trustee.

Argument

The key point in this case is that the Attorney General submitted himself to the jurisdiction of the New York Court of Equity in the 1944 action which resulted in the 1948 judgment against him; and again in the second action he submitted himself to the New York Court of Equity by appearing and filing an answer and asking the court for certain relief; and the New York Court of Equity determined that the judgment rendered in the preceding action was *res judicata*.

In the preceding action, The New York Court of Equity had jurisdiction of the trust and any question affecting the trust. This jurisdiction once having attached to the trust, continued with respect to all matters pertaining to accounting and the disposition of the trust.

The Attorney General says that his submission to the New York Court of Equity has no significance and he points to two cases of very limited scope. We believe that the case which governs such submission is *Matter of Thekla* 266 U.S. 328 where Mr. Justice Holmes in holding that the District Court had jurisdiction to render judgment against the United States said at page 339:

> "When the United States comes into court to assert a claim it so far takes the position of a private suitor as to agree by implication that justice may be done with regard to the subject matter."

The Attorney General also says that the prior action with respect to this trust could not affect the right of the Attorney General to seize the principal of this trust. We think it did. First the court held that the Attorney General was not entitled to the income and that those entitled to the principal and income could not be determined until the trust terminated; and the Court of Appeals also rejected the eleventh hour demand made by the Attorney General in his brief to the effect that he was entitled to seize the trust fund pursuant to his powers under Section 5b (1) of the Trading with the Enemy Act (40 Stat. 415); demanding that:

> " *** the entire principal of the said trust should be transferred to the Attorney General as successor to the Alien Property Custodian on the ground that all interests in the trust had vested in the Attorney General by said Vesting Order #4551" (R. 155).

Finally the 1953 vesting order was not a new order. It was an amendment to an order which had been passed upon at the request of the Attorney General in the preceding action.

What the Attorney General is asking this court to do is to review a case which was decided on the basis of *res judicata*.

Conclusion

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

THOMAS A. RYAN

Counsel for Respondent, The Chase National Bank of the City of New York, now The Chase Manhattan Bank, as Trustee under indenture dated the 21st day of March 1928, between Charles L. Cobb and The Chase National Bank of the City of New York

January 1956

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IN THE

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OCTOBER TERM, 1956

HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian,

Petitioner

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, As Trustee Under Indenture Dated the 21st Day of March, 1928, Between Charles L. Cobb and the Chase National Bank of the City of New York, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENTS HANS DIETRICH SCHAEFER, BRUNO CARL REINICKE, ROBERT HANS REINICKE AND JOHANNE MARIA REINICKE SCHAEFER

SAMUEL ANATOLE LOURIE
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Petitioner

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, As Trustee Under Indenture Dated the 21st Day of March, 1928, Between Charles L. Cobb and the Chase National Bank of the City of New York, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENTS HANS DIETRICH SCHAEFER, BRUNO CARL REINICKE, ROBERT HANS REINICKE AND JOHANNE MARIA REINICKE SCHAEFER

Questions Presented

1. Whether the instrument entitled "Amendment to Vesting Order 4551" dated April 6, 1953, issued eight years after the cessation of hostilities and eighteen months after the formal termination of the state of war between the United States and Germany, is unconstitutional, unlawful, and contrary to the Trading with the Enemy Act.

2. Whether the Attorney General is entitled to immediate possession of the corpus of the trust on the basis of said instrument.

3. Whether the judgment rendered in the prior litigation, which, among other things, denied that petitioner was entitled to immediate possession of the corpus of the trust and of all accumulations, is a bar to similar relief requested by the petitioner in this litigation without any new or different operative facts underlying the vesting orders, on the principles of *res judicata*.

Statutes Involved

The relevant provisions of Section 2 of the Trading with the Enemy Act, as amended, (hereafter briefly referred to as "T. E. A.") are set forth in the Appendix, *infra*, pp. 31-32.

Statement

The action was brought by The Chase National Bank of The City of New York, Trustee under the indenture specified in the caption (hereinafter briefly "Trustee") for judicial settlement of its intermediate account of proceedings under an *inter vivos* trust. In view of the request of the Attorney General, as Successor to the Alien Property Custodian (hereinafter briefly "Custodian" or "Petitioner"), to deliver to him the trust property, the Trustee also asked the court to determine whether or not the principal of the trust should be transferred to the Custodian.

The Custodian, who was a party defendant to this action, appeared generally and filed an answer, demanding affirmative relief. He demanded judgment adjudging him to be entitled to immediate possession of the *corpus* and income of the trust, and ordering the payment and delivery of said property to him after the deduction of all expenses and charges.

Although certain objections were raised by the Custodian against the account of proceedings of the Trustee, the portion of the judgment of the Supreme Court, New York County, judicially settling the account of proceedings of the Trustee, is for all practical purposes beyond dispute.

Beyond dispute also are the following relevant and salient facts:

The trust herein is a continuing trust and has not terminated; the remainder interests created under the Trust Indenture, Article 6, are contingent in their nature; there are outstanding beneficial interests under the trust which have not yet validly vested; the ultimate remaindermen are not ascertainable and cannot be identified at this time (R. 160).

The trust fund and accumulated income thereof is held by the Trustee under the Indenture of Trust, dated March 21, 1928, and is not properly payable or deliverable to, or claimed by, or held for, or owned by any person, but is to be held, administered and disposed of by the Trustee as provided in the Indenture of Trust for future distribution not to take effect earlier than after the death of the survivor of Bruno Reinicke and his wife. All income is to be accumulated and added to the principal as provided in the Indenture, and authorized by the law of Illinois governing the trust (R. 160). Bruno Reinicke, Jr., the settlor, and his wife, and their three children, Bruno Carl Reinicke, Robert Hans Reinicke and Johanne Maria Reinicke Schaefer, were living on April 6, 1953 and are still living.

By Vesting Order 4551, dated January 29, 1945, (R. 67-72) the Custodian vested "all right, title, interest, and claim" in the trust of Bruno Reinicke, his wife and the three children.

Although the Supreme Court of the State of New York has determined in the prior litigation commenced in 1945 as well as in this litigation that the ultimate remaindermen are not ascertainable and cannot be identified then or now, the Custodian, in complete disregard of the prior judicial

determination, listed in the "Amendment to Vesting Order 4551" (R. 72-75) the same persons as were listed in the 1945 Vesting Order, and found that the property was owned by them and determined that they were "nationals" of Germany. In order to circumvent the binding effect of the prior valid adjudication, the Custodian purported to vest in himself the "res" of the trust.

The "Amendment to Vesting Order 4551", dated April 6, 1953, did not find and determine that the owners or beneficiaries of the trust were "enemies" as defined in Section 2 of T. E. A.

Bruno Carl Reinicke and Robert Hans Reinicke were born February 10, 1921 and October 8, 1923, respectively, in the United States, United States citizens by birth (R. 47). Bruno Carl Reinicke, Robert Hans Reinicke, and Johanne Maria Reinicke Schaefer were residents of the United States on the date of issuance of "Amendment to Vesting Order 4551".

The state of war between the United States and the Government of Germany was terminated by House Joint Resolution 289, on October 19, 1951 (65 Stat. 451), and by the Proclamation of the President of October 24, 1951 (Proclamation No. 2950, 50 U. S. C. A. Appendix, p. XX).

On April 17, 1953, the White House announced the termination of the program for vesting of German-owned properties located in the United States (Department of State Bulletin, May 18, 1953, p. 720 (R. 337). The press release stated among other things:

> "This action constitutes a further step in the orderly conclusion of a wartime measure inaugurated by the U. S. Government shortly after the outbreak of World War II."

Summary of Argument

1. The instrument entitled "Amendment to Vesting Order 4551", dated April 6, 1953, is unconstitutional, contrary to the Trading with the Enemy Act, and unlawful. It was issued after the formal termination of the state of

war with Germany by Joint Resolution of Congress, approved October 19, 1951 (65 Stat. 451) and the proclamation of the President of October 24, 1951 (Proclamation 2950, 50 U. S. C. A. Appendix, p. XX). By the express terms of the Trading with the Enemy Act, the Alien Property Custodian is authorized to vest property of enemies only during the time of war. *Miller* v. *Rouse,* 276 Fed. 715 (S. D. N. Y.); *Matheson* v. *Hicks,* 10 F. 2d 872 (E. D. N. Y.); *Sutherland* v. *Guaranty Trust Co.,* 11 F. 2d 696 (C. A. 2); *Brownell* v. *Edmunds,* 110 F. Supp. 828 (W. D. Va.). The said Joint Resolution, in part reserving the power to vest enemy property after the proclamation of the end of the war, is unconstitutional and contrary to international law, and the exercise of such vesting power by the said Amendment is unlawful. If the Trading with the Enemy Act or the Joint Resolution should be regarded as conferring such vesting power upon the Custodian, the Act or Resolution to this extent is unconstitutional.

2. The property attempted to be seized by the "Amendment to Vesting Order 4551" was not subject to vesting or seizure prior to January 1, 1947 under the provisions of the Trading with the Enemy Act. By a prior vesting order (Vesting Order 4551, dated January 29, 1945) the Custodian vested "all right, title and interest" in the trust of persons allegedly affected with "enemy taint". All other interests are clearly American: the Trustee is an American bank; Hans Dietrich Schaefer is an American citizen by birth, born on August 15, 1953, and he "may become entitled to the entire principal of said trust fund" (R. 338). Having exhausted all of his vesting power with respect to the trust, the Custodian belatedly issued an extended vesting order under the guise of an amendment. No legal effect should be given to such attempted seizure eight years after the cessation of hostilities, and eighteen months after the formal termination of the state of war with Germany.

3. The "Amendment to Vesting Order 4551" failed to determine upon investigation that the owners or beneficiaries of the trust are "enemies or allies of enemies" as

defined in Section 2 of the Trading with the Enemy Act. It could not so determine because the beneficiaries were not "enemies" at the date of vesting. It would serve no wartime purpose or any other legitimate purpose of the Trading with the Enemy Act to vest (eleven years after the factual cessation of hostilities) property that could not be retained. *Guessefeldt* v. *McGrath,* 342 U. S. 308. The sole result would be in effect the destruction of the trust. The interests of the United States are fully protected if the trust continues to be administered by the American Trustee. Absent a finding in the "Amendment to Vesting Order 4551" that the property is "enemy" (as defined in Section 2) the legal effect of the Amendment may be questioned in this action. This is an action by the Trustee for an accounting and for instructions in a court having jurisdiction over the Trustee and the trust property.

4. There is no authority in the Trading with the Enemy Act for the Custodian to take over and administer the trust by stepping into the shoes of the indenture Trustee. The Act provides that the Custodian shall have the power of a *common-law* trustee and not rights and duties circumscribed by an indenture of trust. *Zittman* v. *McGrath,* 341 U. S. 471, and *Brownell* v. *Singer,* 347 U. S. 403, are distinguishable since in the *Zittman* case the bank had no interest in the property except that of a stakeholder, while in *Brownell* v. *Singer* the property was in the hands of the New York Superintendent of Banks as liquidator.

5. The remedies under Section 9(a) of the Trading with the Enemy Act to which the infant Hans Dietrich Schaefer is relegated by the Custodian afford no protection to his interests since the remedies provided by that section are illusory and inadequate in the instant case. Section 9(a) requires that the claimant establish as of the time immediately prior to seizure his ownership of a proprietary interest in the property. The Custodian takes the position in this case (Petitioner's brief, p. 27), and would doubtless take a similar position in a Section 9(a) case, that "Schae-

fer's interest is contingent, not vested, and he has no present possessory interest to assert."

6. The 1948 judgment in the prior litigation affecting the trust is a complete bar to petitioner's present claim for possession of the trust *res*. In the prior action, in which Custodian's request that he was entitled to immediate possession of the trust *res* was denied, the underlying operative facts were the same as they are in this action. No new or additional "enemy interest" was specified or found to exist in the "Amendment to Vesting Order 4551". The Amendment is a mere device employed five years after the termination of the prior action to circumvent the binding effect of the prior judgment. The New York Court of Appeals in 1948 rejected the request for relief by the Custodian—relief identical with that sought in the present suit—and from the earlier judgment Custodian took no appeal to this Court. Petitioner is therefore barred by the doctrine of *res judicata* (*Angel* v. *Bullington*, 330 U. S. 183; *Baltimore S. S. Co.* v. *Phillips*, 274 U. S. 316; *U. S.* v. *International Building Co.*, 345 U. S. 502; *Cromwell* v. *County of Sac*, 94 U. S. 351).

ARGUMENT

POINT I

The instrument entitled "Amendment to Vesting Order 4551", dated April 6, 1953, is unconstitutional, contrary to the Trading with the Enemy Act, and unlawful.

The authority of the Custodian to vest stems from the constitutional grant of power to Congress to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water. Said this Court in a leading case:

> "The Trading with the Enemy Act, whether taken as originally enacted . . . or as since amended . . . *is strictly a war measure** and finds its sanction in the

* Italics through this brief are ours unless otherwise indicated.

> constitutional provision . . . empowering Congress 'to declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water' " (*Stoehr* v. *Wallace,* 255 U. S. 239, 241-242).

The question, therefore, presents itself: when and how long can the "war power" be relied on as a basis for "strictly a war measure". The answer is provided by the Trading with the Enemy Act itself (40 Stat. 411 [1917]), as amended, 50 U. S. C. App. §§ 1-40): during time of war and until the "end of the war" within the meaning of the Act.

Section 2 of T. E. A. (50 U. S. C. App., § 2)[1] sets forth definitions for certain operative words and phrases used in the Act, and among others, "the beginning of the war" and the "end of the war".

> "The words 'end of the war', as used herein, shall be deemed to mean the date of proclamation of exchange ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the 'end of the war' within the meaning of this Act."

The state of war between the United States and the Government of Germany declared by the Joint Resolution of Congress, approved December 11, 1941 (55 Stat. 796), was officially terminated by Joint Resolution of Congress, approved October 19, 1951 (65 Stat. 451), and the Proclamation of the President of October 24, 1951 (Proclamation 2950, 50 U. S. C. A. Appendix, p. XX).[2]

The Joint Resolution provided, however, that notwithstanding the Resolution "any property or interest which

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[1] See Appendix, pp. 31, 32.

[2] The Contractual Agreements with the Federal Republic of Germany, bringing to an end the occupation of Germany and including the Federal Republic as an equal partner in the community of nations, were signed May 26, 1952. On August 6, 1952, President Truman formally ratified, pusuant to the advice and consent of the Senate, the Convention on Relations between the Three Powers and the Federal Republic of Germany. 26 Department of State Bulletin 887-888 (1952); 27 *ibid.* 220 (1952).

prior to January 1, 1947, was *subject to vesting or seizure* under the provisions of the Trading with the Enemy Act . . ., or which has heretofore been vested or seized under that Act . . . . shall continue to be subject to the provisions of that Act in the same manner and to the same extent as if this Resolution had not been passed and such proclamation had not been issued."

Petitioner contends that the above reservation authrized him to issue the "Amendment to Vesting Order 4551" after the "end of the war" within the meaning of T. E. A. (Petitioner's brief, p. 17). The contention is based on an erroneous construction of the constitutional war power (U. S. Constitution, Article 1, Section 8, Clauses 11 and 18), to wit, that it may be relied on in peace time. Such a construction is not only a contradiction in terms, but militates against the express language of the T. E. A., the Fifth Amendment and basic principles of international law.

After World War I the Joint Resolution of March 3, 1921 (41 Stat. 1359), terminating war time legislation, expressly exempted the T. E. A. from its operation and effect. The Joint Resolution terminating the state of war between the Imperial German Government and the United States, approved July 2, 1921 (42 Stat. 105) also expressly exempted from its operation and effect all German property "which was on April 6, 1917, in or has since that date come into possession or under control of or has been *subject of a demand* by the United States of America or of any of its officers, agents, . . .". The expressions "subject of a demand" in the Resolution adopted after World War I, and "subject to vesting or seizure" in the Resolution adopted after World War II are comparable.[3] The instrument of seizure during World War II was termed Vesting Order and was deemed effective upon publication in the Federal Register. Notwithstanding the quoted reser-

[3] "During World War I the instrument of seizure was termed a 'demand' and the seizure was made by service of that instrument. As of date of 'notice' of the demand the property 'vested' in the Custodian" (Custodian's brief on appeal to the Appellate Division, p. 31).

vation, the decisions rendered after World War I held that the Custodian's right to seize enemy property ceased when the state of war between the United States and Germany ended.

Miller v. *Rouse*, 276 Fed. 715, 717 (S. D. N. Y.)
Matheson v. *Hicks*, 10 F. 2d 872, 873 (E. D. N. Y.)
Sutherland v. *Guaranty Trust Co.*, 11 F. 2d 696, 698 (C. A. 2)

The Custodian endeavors to escape the effect of the holdings after World War I by arguing: "That Joint Resolution reserved, however, the authority to reduce to possession property which has already been seized by the service of an instrument deemed a 'demand' " (Petitioner's brief, p. 19, footnote 15). In the instant case, the "Amendment to Vesting Order 4551", dated April 6, 1953, was made, published and served eighteen months after the Joint Resolution and the property was not yet seized.

In *Miller* v. *Rouse, supra*, a demand signed before the date of the proclamation of peace in World War I was served three days after the proclamation. The court disagreed with the contention of the Custodian that the mere signing of the demand was sufficient and satisfied the requirement of the reservation "*has been subject of a demand*"; it held that the property did not become the "subject of a demand" until all steps were taken which would vest the property in the United States; and that such vesting did not occur until the demand was served, which demand, coming after the proclamation, was too late.

In *Matheson* v. *Hicks, supra*, the *third demand*, signed by Custodian Thomas W. Miller, dated November 8, 1921, stated to be *supplementary to former demands* and much more elaborate, was held to be ineffective, inasmuch as this latest demand was served after the formal termination of war with Germany, on July 2, 1921.

In *In re Sutherland*, 23 F. 2d 595, 599 (C. A. 2) the court said:

> "Peace with Germany was declared by resolution of Congress effective July 2, 1921 (42 Stat. 105), which ended the state of war then existing between the United States and Germany. The Custodian's right thereafter to seize enemy-acquired property ceased. *Sutherland* v. *Guaranty Trust Co.* (C. C. A.) 11 F. (2d) 696; *Miller* v. *Rouse* (D. C.) 276 F. 715."

A similar conclusion was reached in *Brownell* v. *Edmunds* 110 F. Supp. 828 (W. D. Va. 1953) where the court stated:

> "By the express terms of the Trading with the Enemy Act, the Alien Property Custodian is only authorized to vest in himself for the benefit of the United States, property of enemy nationals during the time of war. *Miller* v. *Rouse, supra, Matheson* v. *Hicks*, D. C. 10 F. 2d 872, *Sutherland* v. *Guaranty Trust Co.*, 2 Cir., 11 F. 2d 696." (110 F. Supp. at 833).

The Joint Resolution terminating the state of war between the United States and Germany did not amend the definition "end of the war". Petitioner's argument: "Without a hearing and without compensation, Congress, on October 18, 1951, could have enacted a statute transferring to the United States, or any agency of the United States, title to all German property within our reach, without calling upon any executive agency to act by way of seizure" (Petitioner's brief, p. 18)—is sheer conjecture. Extension of the use of war power for confiscation of property beyond the formal termination of the state of war would raise serious constitutional doubts and, possibly, render the statute invalid. It may be necessary in order to uphold the constitutionality of the Joint Resolution, to decide that the instrument entitled "Amendment to Vesting Order 4551", dated April 6, 1953, and the steps taken in pursuance thereof by the Custodian are unconstitutional, unlawful and invalid.

Petitioner's argument that continuation of the vesting authority beyond the formal termination of the state of war was within the war powers of Congress under the Constitution (Petitioner's brief, p. 18) is not sustained by the cases cited in support. *Hamilton* v. *Kentucky Distilleries*, 251 U. S. 146, did not involve the T. E. A. There this Court held valid a measure enacted into law after the signing of the Armistice with Germany on November 11, 1918, prohibiting the sale of alcohol for beverage purposes. The Court pointed out that the *mere cessation of hostilities* does not end the power of Congress to enact war measures. The statute there in question contained the provision that it would remain in effect "until the conclusion of the present war and thereafter until the termination of mobilization, the date of which shall be determined and proclaimed by the President".

Woods v. *Miller Co.*, 333 U. S. 138, involved the authority of Congress to regulate rents after termination of *hostilities* and not termination of war. This Court said, Mr. Justice Douglas writing the majority opinion:

> "We recognize the force of the argument that the effects of war under modern conditions may be felt in the economy for years and years, and that *if the war power can be used in days of peace* to treat all the wounds which war inflicts on our society, *it may not only swallow up all other powers of Congress but largely obliterate the Ninth and the Tenth Amendments as well.*" (333 U. S. at pp. 143-144).

Concurring with the majority, Mr. Justice Jackson wrote:

> "Particularly when the *war power* is invoked to do things to the liberties of people, or to their property or economy that only indirectly affect conduct of the war and *do not relate to the management of the war itself, the constitutional basis should be scrutinized with care.*
>
> "* * * I would not be willing to hold that war powers may be indefinitely prolonged merely by keeping legally alive a state of war that had in fact ended.

> *I cannot accept the argument that war powers last as long as the effects and consequences of war, for if so they are permanent*—as permanent as the war debts." (333 U. S. at pp. 146-147).

In the instant case, the Joint Resolution specifically declares the termination of the state of war but fails to fix a terminal date for seizure.

In *Ludecke* v. *Watkins*, 335 U. S. 160, this Court upheld on the authority of *Woods* v. *Miller*, *supra*, the deportation of an alien enemy after the cessation of actual hostilities on the ground that "when the life of a statute is defined by the existence of a war, Congress leaves the determination of when a war is concluded to the usual political agencies of the government" (Footnote 13, 335 U. S. 169). The Court in *Woods* stressed that "the political branch of the government has not brought the war with Germany to an end" (335 U. S. 170). In the instant case the war was brought to an end by the Presidential proclamation and the statutory definition (Section 2) of the "end of the war" thereby became operative.

The decision of this Court in *Commercial Trust Co.* v. *Miller*, 262 U. S. 51 does not aid the Custodian. There the first demand was served on July 8, 1918, and the second demand was served on April 17, 1919, that is, *long before* the adoption of the Peace Resolution by Congress on July 2, 1921. Therefore, the Custodian could and in fact did argue that his right to the possession of the property was not affected by the Armistice or by the termination of the war by Resolution of Congress and Proclamation of the President. There was no need for this Court to decide, nor did it decide, that German property can be seized after the end of the war. In the instant case the purported vesting took place after the termination of a state of war.

Petitioner argues: "A similar application of the war power is found in the cases dealing with treaties of peace. A provision for the continuation after the war of the authority to seize enemy property is a familiar one in such treaties; it is a part of the process of terminating the war" (Petitioner's brief, p. 20).

This petitioner's argument seems to have impressed the Court of Appeals for the Seventh Circuit in *Ladue & Co.* v. *Brownell,* 220 F. 2d 468, *cert. den.* 350 U. S. 823. The court there said:

> "We can perceive no real difference between the power of the Government to retain such seizure power, as against individuals, in a treaty and in the unilateral declaration by this nation of the termination of the state of war." (220 F. 2d 468, 471)

It is surprising, indeed, that the court could perceive no real difference, as the difference is obvious under constitutional and international law. A country, party to a peace treaty, may relinquish or assign its rights and its nationals' rights to property in this country, to be devoted to the payment of claims of the United States and its nationals. The agreement of the other country is designed to furnish the basis lacking in constitutional law for the confiscation of property in time of peace. "The vesting contemplated by Article 29 [in the Treaty of Peace with Hungary] is not the statutory vesting but has a much broader purpose" said the Court of Appeals for the District of Columbia in *Codray* v. *Brownell,* 207, F. 2d 610, 613 (C. A. D. C.), *cert. den.,* 347 U. S. 903, a decision referred to by the petitioner (Petitioner's brief, p. 20).[4] Characterization of confiscation pursuant to an international agreement as "proper exercise of the war power" and "incidental to the war and within the war powers" (*Ladue & Co.* v. *Brownell, supra,* pp. 471-472) is rationalization by attaching labels. The so-called "Litvinov Assignment" was not a peace treaty signed after a war between the two countries; yet it accomplished a similar result. (For the text of the Assignment, see *United States* v. *Pink,* 315 U. S. 203, 212.)

[4] It is interesting to note that the Custodian in his brief in that case in opposition to petition for certiorari said (Brief in opposition, p. 20): "Second, the Treaty was a Treaty of Peace and the power to seize enemy property under the Trading with the Enemy Act does not survive *the end of the war. Sutherland* v. *Guaranty Trust Co.,* 11 F. 2d 69 (C. A. 2)."

A provision in a treaty cannot support an argument that Congress can seize property in time of peace by a unilateral act. Statutory vesting and seizure must constitute a valid exercise of a power granted by the Constitution.

The denial of the petition for certiorari by this Court in *Ladue & Co. v. Brownell,* 220 F. 2d 468 (C. A. 7), *cert. den.* 350 U. S. 823, has no legal significance for the purpose of the instant case because the action under Section 9(a) of T. E. A. was dismissed for failure of the claimant there to file the notice of claim required by Section 9(a). The principal question presented on petition for certiorari was whether petitioner may maintain an action for the recovery of property vested under T. E. A. without filing a sworn notice of claim as required by Section 9(a) of the Act. The Custodian argued that the filing of a notice of claim was a condition precedent of petitioner's right to maintain an action for the recovery of seized property or its proceeds and that this failure to comply with the terms of an exclusive statutory remedy made it unnecessary for the Supreme Court to reach other issues. Under the circumstances the discussion of the constitutionality of the authority to vest reserved in the Joint Resolution in the opinion of the Court of Appeals is *dictum* and otherwise fallacious.

Petitioner's reference to *National Savings and Trust Co.* v. *Brownell,* 222 F. 2d 395, (C. A. D. C.), *cert. den.,* 349 U. S. 955 (Petitioner's brief, p. 20) is not well taken. In that case the Custodian issued a so-called "right, title and interest" vesting order in 1948, and in February and May, 1951 issued so-called "*res*" vesting orders. The appellants argued that the constitutional power to seize property had terminated before these vesting orders were issued. The court there said:

> "So at the time of the vesting orders here involved hostilities had ceased and many factual circumstances premised upon peace had occurred; but no treaty of peace with Germany had been executed, *and neither the Congress nor the President had formally declared the end of the war with Germany.*" (222 F. 2d 396, 397)

The court foot-noted the statement quoted above as follows: "The President did issue such a Proclamation on October 24, 1951 * * *". (Footnote 10, 222 F. 2d 395, 397).

Referring to *Commercial Trust Co.* v. *Miller, supra,* the Court of Appeals in the *National Savings* case confined the holding of that case to the issues there presented. It concluded its opinion as follows:

> "In the case at bar we need go no further than the cited cases go. The sum of the facts and circumstances enumerated by our appellants does not total a termination of constitutional war power, so long as *neither the Congress nor the President had declared the end of the war.*" (222 F. 2d 395, 398)

With the war legally at an end and with the lapse of time since its termination in fact, the war power may not be relied upon to support the executive action here at issue.

POINT II

The Trust res was not subject to vesting or seizure prior to January 1, 1947 under the provisions of the Trading with the Enemy Act.

Assuming, but not conceding, that the vesting of German-owned property after the termination of the state of war with Germany was constitutional and in accord with established principles of international law, the vesting of the trust *res* herein was unlawful. Quite aside from the absence of a formal finding that the trust is "property or interest which prior to January 1, 1947 *was subject to vesting or seizure*" under the provisions of T. E. A., the property herein was not subject to such vesting.

All that was subject to vesting prior to January 1, 1947 was vested by Vesting Order 4551, executed on January 29, 1945. By that Vesting Order the Custodian vested all re-

versionary interests and all existing beneficial interests. Nothing beyond these contingent interests was "enemy-owned".

The Trustee is an American bank.

Hans Dietrich Schaefer, an American citizen by birth, was born on August 15, 1953, and he "may become entitled to the entire principal of said trust fund" (R. 338). Yet, his interest was not, and could not have been vested prior to January 1, 1947, or on April 6, 1953.

Consequently, by the Vesting Order of January 29, 1945, the Custodian exhausted all the vesting power he had with respect to the trust. He may not belatedly issue an extended vesting order under the guise of an amendment. To grant legal effect to such seizure 8 years after the cessation of hostilities, 18 months after the formal termination of war, and on the eve of the President's announcement on April 17, 1953 of the termination of further vesting of German property (R. 377), would subvert the policy underlying T. E. A.

The national interest of the United States is adequately protected by the vesting under the 1945 Vesting Order of "all right, title, interest and claim" of the settlor, his wife and children, and by the provision in the judgment appealed from that "no payment of income, of principal or of accumulated income of the said trust shall be made to any beneficiary without 60 days' written notice to the Attorney General of the United States to be given by registered mail" (R. 177). On the other hand, the delivery of the trust fund to the Custodian would cause irreparable damage to the fund and to the property interests of private persons, among them an infant American citizen.

It is to be remembered that T. E. A., as amended, is not a "carefully matured enactment", but legislation of a "makeshift patchwork", and therefore a wise latitude of construction should be adopted in enforcing its provisions. So said this Court in *Guessefeldt* v. *McGrath*, 342 U. S. 308, 319.

POINT III

"Amendment to Vesting Order 4551" dated April 6, 1953, is contrary to the Trading with the Enemy Act and does not authorize the Custodian to seize and retain the Trust Property.

Section 7(c) of T. E. A. requires that a determination must be made before vesting, based upon preliminary investigation, that the property is owned by, or belongs to, or is held for, by, on account, or on behalf of, or for the benefit of an enemy. The "Amendment to Vesting Order 4551" (R. 72-75) recites that after investigation, a determination was made that certain persons are "nationals of a designated enemy country (Germany)". That is neither sufficient nor in compliance with the requirements of Section 7(c).

Thus the order fails to recite that the owners or beneficiaries of the trust are "enemies or allies of enemies" as defined in Section 2.[5] Moreover, the finding of ownership and control of trust property completely disregards the previous judgment, dated January 30, 1948.

The owner of the property must be an enemy on the date of vesting to sustain its vesting and retention as enemy property.[6] Congress did not provide that an "enemy" shall be deemed to include indiscriminately any individual who at any time after the outbreak of war resided in enemy territory.

On April 6, 1953, the equitable ownership of the trust could not be ascertained. The trust is a continuing trust

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[5] Such a finding was made, for instance, in the Vesting Order vesting 29 Italian and German vessels (7 F. R., pp. 5738, 5739, July 28, 1952).

[6] Said the Custodian in his brief in opposition to the petition for certiorari in Codray *v.* Brownell, 207 F. 2d 610, *cert. den.* 347 U. S. 903:

> "Even under the 1941 Amendment to the Act, the authority to seize property and retain it as against a suit under Section 9(a) of the Act is restricted to 'enemy' property. *Clark* v. *Uebersee Finanz Korporation*, 332 U. S. 480."

and has not terminated. The remainder interests created under Article 6. of the trust indenture are contingent in their nature. There are outstanding beneficial interests under the trust which have not yet validly vested; the ultimate remaindermen are not ascertainable and cannot be identified at this time (R. 160). The Trustee is an American bank without enemy taint. Pursuant to provision of the previous judgment the American Trustee exercises its own discretion in administration of the trust without any control and supervision except by the New York court (R. 156, 160, 161, 168, 221). The "Amendment" itself describes the property as "property in the possession, custody or control of the Chase National Bank of the City of New York, as trustee" (R. 74).

On April 6, 1953, the date of vesting, Bruno Carl Reinicke and Robert Hans Reinicke, American citizens by birth in the United States (R. 47), and Johanne Maria Reinicke Schaefer, resided in the United States; they were neither doing business within Germany nor acting as agents of the German government, nor does the Custodian so claim. Consequently, they did not on that date fall within the definition of "enemy" as prescribed by Section 2 of T. E. A.

At the time of the making of the "Amendment" there was in being an American citizen, the respondent Hans Dietrich Schaefer, born on August 15, 1953, at Detroit, Michigan, who has a contingent interest in the trust fund. The infant may become entitled to the *entire* trust fund upon the trust's termination (R. 159).

These facts show how baseless is the following statement of petitioner: "In this case, of course, there is no question that the enemy interests overwhelmingly predominate" (Petitioner's brief, p. 24).

Petitioner in his brief uses the terms "enemy", (pp. 14, 15, 16, 20, 24, 26) "enemy national", (pp. 7, 23) "German nationals", (13, 23) "national of a designated enemy country" (pp. 2, 5, 6, 23) interchangeably and as synonyms. Such usage is clearly improper. The term "national of a designated enemy country" is necessarily broader than

"enemy" in Section 2 of T. E. A.; it stems from Section 5(b), as amended in 1941. Section 5(b), however, does not distinguish between enemy and non-enemy property, and does not provide the standard for this differentiation.

Assuming, *arguendo*, that the above beneficiaries, as "non-enemies" within the meaning of Section 2, may assert their rights and claims under Section 9(a), as is asserted in the petitioner's brief, then the petitioner has vested more than he can retain. Said this Court in *Guessefeldt* v. *McGrath*, 342 U. S. 308:

> "It is clear that the Custodian can lawfully vest under § 5 a good deal more than he can hold against a § 9(a) action. *Central Union Trust Co.* v. *Garvan*, 254 U. S. 554; *Clark* v. *Uebersee Finanz-Korp.*, 332 U. S. 480."

We submit that under the circumstances the statute should be construed so as to avoid confiscation.

> "Considering that confiscation is not easily to be assumed, a construction that avoids it and is not barred by a fair reading of the legislation is invited." (*Guessefeldt* v. *McGrath*, 342 U. S. 308, 319).

Petitioner's point that the correctness of the Custodian's finding that the property is "enemy" in character is challengeable only in a suit for recovery brought under Section 9(a) (Petitioner's brief, p. 16) is not well taken. There is no finding that the property is "enemy" in character as defined in Section 2. There is no vesting order in compliance with Section 7(c). This is not an action under Section 17, and the petitioner himself has finally conceded that he was "entitled to enforce in the state courts" the obligation to deliver possession (Petitioner's brief, p. 16). Under the circumstances the validity of the instrument or obligation based thereon may be questioned.

This does not amount to a request for judicial review of a determination as to "enemy ownership" recited in the instrument, but to a denial of the legal effectiveness of the

instrument. Moreover, even such determination can be challenged if its legal defects are apparent on its face and no adequate remedy is provided. The determination of ownership of the trust property itself (as distinguished from the second step—determination of the enemy character of the owners) is patently erroneous; it is contrary to the determination by the court in the prior action, and contrary to the provisions of the Trust Indenture and the facts prevailing after the previous judgment.

The validity of a vesting order may be called into question as a defense even to a summary possessory action by the Custodian under Section 17 of T. E. A. Thus, in *McGrath* v. *Manufacturers Trust Co.*, 338 U. S. 241, aff'g 169 F. 2d 932 (C. A. 2) the opinion of both the Court of Appeals and the Supreme Court repeated the language of the old World War I Section 17 cases. The Court of Appeals said, speaking through Judge Swan:

> "A suit under Section 17 of the Act is a summary proceeding to compel delivery of possession of enemy owner property which has been *effectively seized by a valid vesting order.*" (169 F. 2d 932, 934.)

The trust *res* herein has not been "effectively seized by a valid vesting order." The validity of the vesting order is contested. Moreover, this action is not "a summary proceeding". It is an action for judicial settlement of the account of proceedings of a Trustee, seeking also instructions of the court with jurisdiction over the Trustee and the trust fund, as to whether or not the petitioner is entitled to immediate possession of the trust *res*.

If Petitioner's "Amendment to Vesting Order 4551" is now enforced and the *corpus* of the trust surrendered to him, no wartime purpose will be served. The sole result will be in effect the destruction of the trust. Yet the interests of the United States are protected if the trust continues to be administered by the American Trustee.

POINT IV

The Trading with the Enemy Act does not authorize the Custodian to take over and administer the Trust by stepping into the shoes of an Indenture Trustee. Zittman v. McGrath, 341 U. S. 471, and Brownell v. Singer, 347 U. S. 403, Distinguished.

In *Zittman* v. *McGrath*, 341 U. S. 471, the Custodian demanded transfer of a credit from a debtor bank which had no interest in the credit except that of stakeholder. Similarly, in *Brownell* v. *Singer*, 347 U. S. 403, decided on the authority of the *Zittman* case, the fund to be paid over to the Custodian pursuant to a "turnover order" involved a fund of a Japanese bank's New York Agency in liquidation in the hands of the New York Superintendent of Banks. In the instant case, the bank is a Trustee which has the legal title to the property and administers the trust in accordance with the rights and duties fixed by the Indenture of Trust.

In the *Zittman* case the Vesting Order vested debts owed to a foreign national by a New York debtor bank, and debts evidenced by instruments endorsed by the foreign national and held by a Federal Reserve Bank. The Custodian also served a "turnover directive" describing the specific property which he required to be turned over to him.

In the instant case the New York courts held in the previous litigation that the equitable ownership of the trust fund cannot be ascertained until the termination of the trust. The Custodian completely ignored this determination in the "Amendment" to the Vesting Order. Since the underlying facts, to wit, the identity of "enemy interest" in the trust as specified in the Vesting Order, as well as in the Amendment thereto, are identical, the "Amendment to Vesting Order 4551" was but a mere device to circumvent the binding effect of previous adjudication. The New York courts properly adhered to their prior determination.

In *Zittman* v. *McGrath*, 341 U. S. 446, this Court held that in the case of a "right, title and interest" vesting

order the Custodian stepped into the shoes of the enemy banks, and in *Zittman* v. *McGrath*, 341 U. S. 471, it held that in the case of a so-called "*res*" vesting order the Custodian stepped into the shoes of the possessor (not the owner) of the credits and funds. These holdings point up sharply that the cited cases are inapplicable to the case at bar. The Custodian cannot step into the shoes of an *indenture trustee* of a *continuing trust*. There is no basis whatsoever for the Custodian to assume the circumscribed rights and the corresponding onerous duties and liabilities of an *indenture* trustee. T. E. A. provides that the Custodian shall have the power of a *common-law* trustee in respect of all property, other than money, delivered to him (Trading with the Enemy Act, § 12, 40 Stat. 411, as amended, 50 U. S. C. App. § 12).

POINT V

The remedy provided by Section 9(a) of the Act is illusory and inadequate in the instant case.

The relegation of the infant Hans Dietrich Schaefer to remedies under Section 9(a) of T. E. A. (the relegation to remedies of Section 32 has now been dropped) does not satisfy the requirements of due process of law. Born in the United States in 1953, this American citizen would be confronted with an argument advanced in similar cases by the Custodian which, if accepted in this case, renders the statutory remedies illusory. The reassurance to the infant that he may avail himself of the remedies under Section 9(a), that "Section 9(a) is to be liberally construed to protect non-enemy persons," or that he may obtain relief in a court of equity (Petitioner's brief, pp. 26-27), is cold comfort. There is no guarantee that the petitioner will refrain from arguing that Section 9(a) provides the only judicial remedy for reclaiming vested property, and that the infant Schaefer did not have the requisite proprietary interest as of the time immediately prior to seizure. Yet if that is so then there is no other course left to Hans Dietrich

Schaefer but to defend his interests in this suit. The notice of claim on his behalf was filed (Petitioner's brief, p. 28, footnote 22) as a measure of precaution of the *Guardian Ad Litem*, and in view of anticipated argument by the Custodian that such a notice is a prerequisite of suit under Section 9(a).

Both Sections 9(a) and 32 require that the claimant establish, as of the time immediately prior to seizure, his ownership of a proprietary interest in the property. Similar statutory language in Sections 9(a) and 32 forms the basis of the proprietary interest concept. Section 9(a) allows return of an "interest, right or title in" the vested property, and Section 32 permits recovery of "any property or interest vested" by the Custodian. Courts under Section 9(a), and the Custodian under Section 32, have generally construed this concept narrowly. For example, the requisite proprietary interest has not been found in remote contingent remainders (*Koehler* v. *Clark*, 170 F. 2d 779 [C. A. 9], where claimant had "an inalienable and unsaleable possible expectancy"). In addition to establishing proprietary interests, claimants must prove ownership of such interests at the date of vesting (*Berger* v. *Ruoff*, 195 F. 2d 775 [C. A. D. C.], *cert. den. sub nom. Berger* v. *McGrath*, 343 U. S. 950; *Corn Exchange Bank* v. *Miller*, 15 F. 2d 456 [S. D. N. Y.]).

Petitioner's relegation of Schaefer to Section 9(a) is nullified by his own statement: "On the record, Schaefer's interest is contingent, not vested, and he has no present possessory interest to assert" (Petitioner's brief, p. 27).

POINT VI

The Judgment in the prior litigation is a complete bar to the Petitioner's present claim.

The prior action was commenced by the Trustee in 1944.

The Trustee there requested judicial settlement of its intermediate account and, in addition, construction of a provision of the Trust Indenture. The provision in ques-

tion (Article 7, R. 37) gave to the Trustee broad discretionary powers of management, subject to prior approval by the settlor, Bruno Reinicke, Jr., during his lifetime, and thereafter by his wife. Alleging that Reinicke and his wife "when last heard from were in Germany", and that the War made communication with them impossible, the Trustee requested a determination permitting exercise of the discretionary powers conferred upon it by Article 7 of the Trust Indenture without giving notice to or obtaining the approval of the settlor or his wife.

The Trustee further requested "that any and all questions which may be raised by any party to this action be determined".

On January 29, 1945, the petitioner issued Vesting Order 4551, and thereafter intervened in the action, requesting judgment that the Trustee be directed to deliver to him, upon termination of the trust, the shares therein of the persons whose interests he had vested; and that he had succeeded to certain powers over the trust (R. 12).

Finally, petitioner requested "*that the entire principal of the said trust should be transferred to the Attorney General* as Successor to the Alien Property Custodian on the ground that all interests in the trust had vested in the Attorney General by said vesting order #4551" (R. 155-156).

After trial, judgment was entered in the prior litigation (R. 211-224) denying the petitioner the affirmative relief he had requested of the New York Supreme Court.

On appeal, the Appellate Division of the Supreme Court affirmed (*Chase National Bank* v. *McGrath*, 276 App. Div. 831). Upon further appeal, the New York Court of Appeals affirmed, the Reporter noting that the petitioner had asserted:

> "(1) [T]hat the trust powers reserved to the settlor had passed, along with the settlor's property, to the Attorney General by reason of the vesting order, and (2) that if the vesting order had not effected such a transfer then the trust had failed and all of the trust

property should pass to the Attorney General under the vesting order as being property of alien enemies'' (Reporter's Notes, *Chase National Bank* v. *McGrath*, 301 N. Y. 602, 603-604).

The 1948 judgment, therefore, fixed the rights of the parties as to receipt and disposition of trust income and exercise of management powers, and further as to the possession of the trust corpus.

Armed with the ''Amendment to Vesting Order 4551'', petitioner demanded judgment in the present action entitling him to ''immediate possession of the property comprising the net corpus of the trust * * * with all income, accumulations and increments thereon in the possession of or under the control of'' the Trustee (R. 65). The Amendment was thus the chosen instrument of the petitioner to destroy the very rights finally adjudicated and established by the judgment in the prior action. He is barred, however, by the doctrine of *res judicata*.

To avoid the bar of *res judicata* petitioner argues that the issues in the present action are different from those presented in the earlier suit because the Amendment was ''a distinct and independent act of seizure'' (Petitioner's brief, p. 11, footnote 8) creating a new cause of action.

The ''Amendment to Vesting Order 4551'', upon which the petitioner so relies, in fact creates no new right. It is merely a new device, without genuine legal effect for the purposes of this case; a device designed to circumvent the judgment of a competent tribunal, twice affirmed by the appellate courts.

The government's cause of action under T. E. A., while in form based upon a document called a vesting order, is in fact predicated upon a finding of enemy ownership or control of property in the United States (Sections 5(b) and 7(c), T. E. A.; 50 U. S. C. Appendix, §§ 5(b) and 7(c); *American Exch. Nat. Bank* v. *Garvan*, 273 F. 43 [C. A. 2], aff'd 260 U. S. 706). The Amendment (R. 72-75) recites precisely the same list of alleged ''nationals of a designated enemy country'' as owners of the property being vested as

does Vesting Order 4551 (R. 67-72). No new or different enemy interests were vested by the Amendment. Of course, it is not claimed that the Trustee is an enemy. And the infant party, Hans Dietrich Schaefer, is an American citizen and, in any event, was not in being prior to January 1, 1947, so that his interest was not subject to vesting.

There is, therefore, no difference in substance between the "enemy-owned" property vested by Vesting Order 4551 and the "enemy-owned" property vested by the Amendment thereto. Only the instrument purporting to evidence the vesting is different. The issuance of such new instrument (the Amendment) may be a new fact, as the petitioner asserts, but it in no wise affects the underlying claim to vest enemy-owned property. This arises not out of the vesting order, *ipso facto,* but from the fact of enemy ownership and control. The quantum of such ownership has not changed since the entry of judgment in the prior action, nor does the petitioner so claim. With respect to control, moreover, the settlor was stripped completely of all powers over the trust by the terms of the prior judgment (R. 221, paragraph 8).

As this Court has pointed out:

> "A cause of action does not consist of facts, but of the unlawful violation of a right which the facts show. The number and variety of the facts alleged do not establish more than one cause of action so long as their result, whether they be considered severally or in combination, is the violation of but one right by a single legal wrong. * * * The thing, therefore, which in contemplation of law as its *cause,* becomes a ground for action, is not the group of *facts* alleged in the declaration, bill, or indictment, *but the result of these in a legal wrong, the existence of which, if true, they conclusively evince.* (*Baltimore S. S. Co.* v. *Phillips,* 274 U. S. 316, 321 [1927]." Italics by the Court.) See, also, *Hurn* v. *Oursler,* 289 U. S. 238, 246.

The "legal wrong" upon which the Custodian's claim was based in the prior action, and upon which it is based

in the present suit, is the alleged ownership by the same "enemy nationals" of property within the United States. The judgment in the earlier suit denying the Custodian's claim to possession is conclusive in the present proceeding as well. Its effect may not be avoided by an Amendment issued 8 years later, but based upon identical factual findings.

Claiming in the earlier suit that the "entire principal of the said trust should be transferred to the Attorney General" (R. 155-156), the petitioner seeks now to avoid the binding effect of the prior adjudication denying him such relief. Petitioner argues (Petitioner's brief, p. 21) that his request for possession in the earlier suit was based on the vesting of designated "interests" and not on a vesting of the corpus.

Such reasoning will not withstand analysis. It is the finding of enemy ownership or control that lends validity to a vesting order. Enemy ownership—not the mere issuance of a vesting order (of whatever variety, "right, title and interest" or *"res"*)—creates the cause of action under T. E. A.

Indeed, petitioner recognizes the force of the argument, for he argues by implication in support of the validity of his attempted seizure (Petitioner's brief, pp. 23-24) that findings of enemy ownership and control are the essential basis for the seizure of property as "enemy". Without such findings there can be no valid vesting for any purpose. The claim that the issuance of the Amendment creates a new and different cause of action (Petitioner's brief, p. 22) thus falls of its own weight. Absent findings of enemy ownership or control there may be no vesting and no seizure, whether by "right, title and interest" or *"res"* vesting order. As previously pointed out, the 1953 finding of enemy taint in this case is precisely identical with the finding incorporated in the 1945 vesting order. Nothing more and nothing less in the way of enemy interests was found. The ritualistic use of the word *"res"* is the weapon with which the petitioner seeks to destroy the effect of the prior

judgment. But petitioner attempted, in the prior litigation, in effect to vest the "*res*", and failed. From the prior judgment of the State's highest court denying that relief, petitioner took no appeal.

In *Angel* v. *Bullington*, 330 U. S. 183, this Court held that where the plaintiff raised a federal question in a state court, and the state court adjudicated that question, plaintiff's failure to appeal to the United States Supreme Court from the state judgment foreclosed further adjudication of the issue. The decision of the state court became final and barred plaintiff from further litigating the same cause of action.

Said the Court:

> "That the adjudication of federal questions by the North Carolina Supreme Court may have been erroneous is immaterial for purposes of *res judicata*. *Baltimore S. S. Co.* v. *Phillips*, 274 U. S. 316, 325. A higher court was available for an authoritative adjudication of the federal questions involved" (330 U. S. 183, 187).

The Court went still further, holding that even a state court determination specifically declining to reach or pass upon the substantive federal issues will bar a second attempt to reach them in another court of the state (330 U. S. 183, 190-191).

Even assuming the causes of action in the two suits to have been different, by reason of the different labels attached to the vesting orders, upon matters actually litigated and determined in the original action the earlier judgment remains conclusive.

U. S. v. *International Building Co.*, 345 U. S. 502, 504-505

Cromwell v. *County of Sac*, 94 U. S. 351, 352-353.

Whether under the principle of *res judicata*, applicable to suits based upon the same cause of action, or the narrower doctrine of collateral estoppel, petitioner has had his day in court on his claim that he is entitled to possession of the

corpus of the trust herein. The Amendment to Vesting Order 4551 adds nothing to his right where the operative facts of enemy interest remain identical (as concededly they do), and where in the prior suit petitioner demanded identical relief.

Conclusion

The "Amendment to Vesting Order 4551", dated April 6, 1953, is unconstitutional, contrary to the Trading with the Enemy Act, and otherwise unlawful. It was a mere device to circumvent the valid prior adjudication of the Court of Appeals of the State of New York. To grant the relief requested by petitioner now would serve no wartime or other legitimate purposes of the Trading with the Enemy Act but would destroy the trust and would amount to confiscation of American and non-enemy property in time of peace.

For the foregoing reasons, the judgment of the Supreme Court of the State of New York should be affirmed.

July, 1956

Respectfully submitted,

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and

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APPENDIX

1. Trading with the Enemy Act, as amended, 40 Stat. 411, 50 U. S. C. App: § 1, et seq.:

SEC. 2. Definitions

The word "enemy", as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

* * * * *

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such

territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

* * * * *

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy".

* * * * *

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

* * * * *

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 24

HERBERT BROWNELL, JR., Attorney General of the United States, as Successor to the Alien Property Custodian,
Petitioner,

v.

THE CHASE NATIONAL BANK OF THE CITY OF NEW YORK, as Trustee Under Indenture Dated the 21st Day of March 1928, Between Charles L. Cobb and The Chase National Bank of the City of New York, *et al.*

BRIEF FOR RESPONDENT ARTHUR J. O'LEARY, GUARDIAN AD LITEM FOR INFANT RESPONDENTS HANS ULRICH SCHWARZBURGER, ELIZABETH SCHWARZBURGER, HANS ADOLPH ROTH, HEIDE ROTH, CHRISTEL ROTH, EIKE ROTH, UWE ROTH, ECKARD ROTH, HANS EBERHARD SCHWARZBURGER, SABINE SCHWARZBURGER, BERND VOM BAUR CHRISTOPH ROTT, TILO KOSTER AND SITTA KOSTER

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Question Presented

The sole question presented by the Attorney General on this appeal is the following:

Whether this Court, in its decisions in *Brownell* v. *Singer*, 347 U. S. 403 and *Zittman* v. *McGrath*, 341 U. S.

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471, has so construed the Trading with the Enemy Act, 50 U. S. C. App. secs. 1, *et seq.*, as to require the New York Supreme Court, in an accounting proceeding brought at the request of the Attorney General (R. 18, 23), to oust itself of jurisdiction of a continuing *inter vivos* trust (R. 160), which is being administered under its supervision by a New York bank as trustee (R. 70), by directing said trustee to transfer to the Attorney General, as successor to the Alien Property Custodian, the accumulated income and corpus of said trust pursuant to an alleged amended vesting order which was filed with the Federal Register on April 9, 1953 (R. 64), a date 18 months after formal termination of the war with Germany (65 Stat. 451; Proclamation 2950, 50 U. S. C. A. App. p. xx), where the following circumstances clearly exist:

(a) that the trust was created on March 21, 1928, long before any freezing or vesting order was made (R. 21);

(b) that one of the remaindermen of the trust is a United States citizen by birth (R. 159, Pl. Ex. 10, R. 253, 186), who was in being prior to the time the alleged amended vesting order was made (R. 159);

(c) that all the remainder interests in the trust are contingent (R. 160) and it cannot be determined at this time to whom the trust fund will be ultimately payable (R. 160).

(d) that the remedy provided by Section 9 of the Act is illusory and inadequate in the instant case (this brief, pp. 10-11);

(e) that there has been a prior judicial proceeding relating to this trust in the New York Supreme Court in which the Attorney General intervened and in which judgment was entered to the effect that said Attorney General is not entitled to the income of said trust and had no authority to exercise the fiduciary powers reserved to Bruno Reinicke, Jr., but that the trustee bank had au-

thority to exercise such fiduciary powers (Pl. Ex. 3, R. 211-223, 183-184; Pl. Ex. 4, R. 229, 184; Pl. Ex. 5, R. 231, 184).

It is respectfully submitted that this Court has not so construed said Act either in the cited decisions or in any other decision.

The Facts

The subject matter of this action is an *inter vivos* trust set up by an indenture dated March 21, 1928, made between Charles L. Cobb as Settlor and The Chase National Bank of New York as Trustee. Although he was named as Settlor, it was determined in a prior action that Charles L. Cobb was not the real creator of the trust but that the actual settlor was Bruno Reinicke.

The trust was created primarily for the benefit of the children of the settlor. The trust agreement (R. 21-53) was made in Chicago, Illinois, on March 21, 1928 and under its terms the trust corpus was granted, conveyed, assigned, transferred, quitclaimed and delivered to The Chase National Bank of the City of New York (R. 21) for the benefit "of the children of Bruno Reinicke, Jr. and Elisabeth Reinicke, his wife, that is to say, Bruno Carl Reinicke and Robert Hans Reinicke and any other children that may hereafter be born * * *" (R. 21). The trustee is directed "to add the net income to the principal of the trust estate unless Bruno Reinicke, Jr. shall * * * direct the trustee to pay the said net income, or some part thereof, to any one or all of his children or to Bruno Reinicke, Jr...or any other person or persons * * *" (R. 22-23).

From the provisions just referred to, it becomes unmistakably clear that title to the corpus is in a trustee. The trustee has complete ownership. The alien interests, that is to say, the unvested interests of alien persons are

contingent. The trustee is to hold the title and ownership: until the death of the survivor of the settlor and his wife; thereupon the principal is to be divided into as many equal shares as there are then children of the settlor surviving, with a provision for children of the settlor who have previously died leaving a descendant or descendants then living (R. 24). The shares in trust for the living children are to be held until the beneficiaries arrive at certain ages when the principal is to be distributed. The children have vested interests subject to being divested and in that sense what they actually have are contingent remainders. If there are no surviving children or descendants of children then provision is made for the distribution of the principal to nephews and nieces and their descendants. The infants I represent are descendants of the nephews and nieces and they have contingent remainders in the entire fund.

Since all the right, title and interest of Bruno Reinicke, Jr., were vested by the Custodian on or about January 29, 1945 (R. 247-251) and since it has been judicially determined that said Bruno Reinicke Jr., could not exercise the powers over the trust given by the indenture to the settlor (R. 221), it is difficult to understand why petitioner has devoted nearly one and a half pages of his brief (pp. 3-4, 24) to detailing such powers. However, it is a fair inference that the purpose of such detail is to create the impression, which is contrary to the fact, that such powers are being actively exercised by an enemy alien.

Summary of Argument

(1) The action of the New York Courts in this case is in harmony with the Trading with the Enemy Act and is not in conflict with the rule in *Brownell* v. *Singer*, 347 U. S. 403, nor with the rule in *Zittman* v. *McGrath*, 341 U. S. 471 because neither of those cases is controlling.

Both of those cases involve money owned by enemy aliens. In our case a New York Trustee under a 1928 trust indenture has ownership and possession and the enemy aliens have contingent remainder interests which cannot ripen into ownership or the right to possession except upon the happening of future events. Since the Alien Property Custodian stands in the shoes of these aliens, he cannot acquire anything more than the aliens have and consequently New York Courts have properly refused to adjudicate the destruction of the trust.

(2) The judgment in the prior action (*Chase National Bank* v. *McGrath*, 301 New York 602) is *res adjudicata*. The judgment in the prior action would be nullified if the Trustee is ordered in this action to turn over the entire fund to the Attorney General.

POINT I

The action of the New York Courts is in harmony with the Statute and does not conflict with the decisions of this Court in *Brownell* v. *Singer* and *Zittman* v. *McGrath*.

The action of the New York Courts in this case is in harmony with the Trading with the Enemy Act and is not in conflict with the rule in *Brownell* v. *Singer*, 347 U. S. 403, nor with the rule in *Zittman* v. *McGrath*, 341 U. S. 471. Neither of these two cited cases upon which the petitioner relies is applicable here.

The instant case must be distinguished from *Brownell* v. *Singer, supra*, and *Zittman* v. *McGrath, supra*, because of important, relevant, essential and outstanding differences. We are not dealing here with enemy owned property; we are dealing with property owned since 1928 by a New York Trust Company, which is held on *inter vivos* trust for the benefit of at least one American citizen,

which is in the process of administration under judicial supervision and which is not "payable or deliverable to, or claimed by a designated enemy country or national thereof" (Ex. Ord. 9193 as amended, 7 F. R. 5205, 10 F. R. 6917). In the *Singer* case the Custodian vested "the excess proceeds of the liquidation remaining after the payment of creditors" from funds that had been on deposit in an agency of an enemy alien bank, 347 U. S. 403, 405. The Courts of New York adjudged that Singer had a preferred claim on those funds the payment of which was conditional upon Singer obtaining a license from Federal Authorities. (*Singer* v. *Yokohama Specie Bank*, 299 N. Y. 113, affirmed *sub nom. Lyon* v. *Singer*, 339 U. S. 841, 94 Law ed. 1323.) But the Alien Property Custodian denied a license to Singer and served a directive that the Superintendent of Banks of New York turn over to him the $557,561.25 that had been allocated and set aside out of the enemy alien's funds as a reserve for the payment of Singer's prefered claim. The New York Superintendent of Banks applied at Special Term of the Supreme Court for an order authorizing him to turn over the funds to the Alien Property Custodian. That application was denied. Special Term held that while the funds could not be paid to Singer, who had been denied a license, neither should the funds be paid over to the Alien Property Custodian. It was held that this allocated fund for payment of a preferred claim did not constitute "excess proceeds" of the Yokohama Specie Bank and were not encompassed by the Vesting Order of 1943 whereby the Custodian had vested "excess proceeds"—that is proceeds over and above the amounts of approved and allowed claims. Special Term also observed that *Lyon* v. *Singer*, 339 U. S. 841, which affirmed a judgment adjudicating that Singer had a preferred claim, with payment conditioned upon obtaining a license, does not mean that a license may be arbitrarily withheld. (*In re Yokohama Specie Bank*, 200 Misc. 610; affirmed

no opinion, 280 App. Div. 970; affirmed no opinion, 305 N. Y. 908.) On appeal by the Attorney General to the Supreme Court of the United States, the judgment of the New York Courts was reversed with a *per curiam* opinion, reading:

> "Reversed. *Zittman* v. *McGrath*, 341 U. S. 471, 95 Law ed. 1112, 71 S. Ct. 846." (*Brownell* v. *Singer*, 347 U. S. 403, 98 Law ed. 803.)

There is a dissenting opinion by Mr. Justice Jackson with whom Mr. Justice Frankfurter and Justice Douglas join.

What was decided and all that was there decided is that the Custodian was entitled to the possession of all the funds in the hands of an agency of an enemy alien even though a creditor had a prefered claim against those funds. That decision has no application to this case which does not involve funds on deposit with an agency of an enemy alien and has nothing to do with creditors or preferred claims.

We turn now to *Zittman* v. *McGrath*, 341 U. S. 471, 95 Law ed. 1112. There the petitioners had levied an attachment against the accounts of the Deutsche Reichsbank with the Federal Reserve Bank of New York and thereafter obtained default judgments against the Reichsbank but the judgments remained unsatisfied because of the freezing program. The Alien Property Custodian issued a Vesting Order whereby he vested in himself the "right, title and interest" of the German banks and also served on the Federal Reserve Bank a "turnover directive" describing the specific property which he required to be turned over to him "to be held administered and accounted for as provided by law." As Justice Jackson stated, 341 U. S. 471 at 473, the Custodian in the relief asked for "omits any request for a declaration that the attachments are invalid. He asks a decree only that Cus-